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Government
Publications

ONTARIO ADVISORY COMMITTEE ON CONFEDERATION

M E E T I N G

held at

950 Yonge Street,
TORONTO

on

FRIDAY, NOVEMBER 19th, 1965



VERBATIM REPORT OF PROCEEDINGS



Meeting held at 950 Yonge Street, TORONTO
on FRIDAY, NOVEMBER 19th, 1965

ONTARIO ADVISORY COMMITTEE ON CONFEDERATION

Professor Ian Macdonald, M.A., O.B.E., F.R.S.E.
Department of Economics & Management
(in the Chair)

Professor John Conroy,
Department of Management,
York University,

M E E T I N G

Professor Donald Bryden, M.A., M.Sc., F.R.S.E.
Department of History, held at
University of Toronto,

Dean Richard Dill, 950 Yonge Street,
Faculty of Engineering, TORONTO
University of Western Ontario,

Dr. Guyana Forsey on

Professor Paul W. Fox, M.A., M.Sc., F.R.S.E.
Professor FRIDAY, NOVEMBER 19th, 1965
Department of Economics, University of Toronto,

Mr. George Gathercole, 1st Vice-Chairman,
Hydro-Electric Power Commission of Ontario

Dean W.R. Anderson, B.A., LL.B.,
Faculty of Law,
Queen's University, Kingston,

C.R. Rogers, Esq., Q.C.,

The Rev. Dr. Lucien Vaia,
President, University of St. Mary's College,

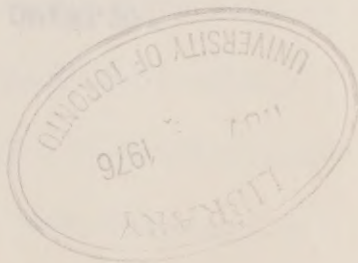
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Department of Economics,
University of Toronto

Professor S. Rothman, LL.B., B.C.L.,
Faculty of Law, University of Toronto

Mr. Roger W. Regan, Q.C.,

Professor T.M.B. Spence,
President VERBATIM REPORT OF PROCEEDINGS
Trent University

Mr. D. Stevenson, Co-Secretaries
Mr. R. Farrell



ONTARIO ADVISORY COMMISSION ON CONSERVATION

SECRET

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on

FRIDAY, 40. FEBRUARY 1966

VEHICULAR REPORT OF PROCEEDINGS

ONTARIO ADVISORY COMMITTEE ON CONFEDERATION

-----Meeting held at 950 Yonge Street, TORONTO,

on FRIDAY, NOVEMBER 19, 1965

PRESENT:

Professor Ian Macdonald, Chief Economist,
Department of Economics & Development,
(In the Chair)

Professor John Conway,
Department of Humanities,
York University.

Professor Donald Creighton, B.A., M.A.,
Department of History,
University of Toronto.

Dean Richard Dillon,
Faculty of Engineering,
University of Western Ontario.

Dr. Eugene Forsey

Professor Paul W. Fox, M.A., Ph.D.,
Professor of Political Science,
Department of Political Economy,
University of Toronto.

Mr. George Gathercole, 1st Vice-Chairman,
Hydro-Electric Power Commission of Ontario.

Dean W.R. LeClerman, B.A., LL.B.,
Faculty of Law,
Queen's University, Kingston.

C.R. Magone, Esq., Q.C.

The Rev. Dr. Lucien Matte,
President, University of Sudbury College.

Professor R.C. McIvor,
Department of Economics,
McMaster University

Professor E. McWhinney, LL.M., S.J.D.,
Faculty of Law, University of Toronto

Mr. Roger N. Seguin, Q.C.

Professor T.H.B. Symons,
President and Vice-Chancellor,
Trent University.

Mr. D. Stevenson,) Co-Secretaries
Mr. R. Farrell)

at 950 Yonge Street, Toronto,
1957

1957

PRESENT:

Professor Ian MacLennan, M.A., Ph.D.,
Department of Education,
(in the chair)

Professor John W. D. ...
Department of ...
York University

Professor Donald ...
Department of ...
University of Toronto

Dean Richard ...
Faculty of ...
University of Western Ontario

Mr. Kenneth ...

Professor ...
Department of ...
University of Toronto

Mr. George ...
Hydro-Electricity ...

Dean W. R. ...
Faculty of Law,
Queen's University, Kingston

O.R. ...

The Rev. ...
President, ...

Professor ...
Department of ...

Professor ...
Department of ...

Mr. ...

Professor ...
Department of ...

Mr. ...
Mr. ...

--- At 2.00 p.m.

THE CHAIRMAN: I am advised that a number of members would like to leave in the neighbourhood of four o'clock, so that, without predisposing our discussion, I will try to work towards that time.

The first item on the agenda is to report on several items of business that have occurred since our last general meeting.

First of all, I would convey apologies for absence from Professor Brady, who is enjoying six weeks at the University College in the West Indies, but will be back for our next meeting; from Mr. Harvey Perry, who is doing his best to assist the Carter Commission to reach their end-of-this-year deadline on the Taxation Commission.

Secondly, I have been concerned from time to time to see if the Committee can move more quickly to positions of policy advices and I have discussed this problem with a number of you individually, as well as with the research policy sub-committee the other week. I would like to suggest once more that we should not feel under any necessary obligation to come to a unanimous view on all matters, desirable as that might be and possible as it may be on certain given situations; but rather to consider the approach of arriving at a number of alternative policy procedures or positions on different issues, establishing the pros and cons of following such

policies, advancing these to the Government, and thereby beginning some two-way process of exchange perhaps between the Committee and the Government where they may refer issues back to us for further consideration or further advice.

Now, on Tuesday I discussed this matter at some length with the Prime Minister, and he agreed that what was required were policy alternatives for the Government to explore. We also discussed, incidentally, some recommendations I had made earlier about the facilities within the Government for discussing these policy matters within the context of Cabinet and so on.

So that I think we should perhaps be guided by this point of view, that we want to establish such positions; we want to lay them forward and see where the Government may wish to carry them, or where they may wish to refer matters to us for further advice.

The next point I wish to report from the conversation with the Prime Minister is that Mr. Robarts is taking steps, as he announced at Trent, to advance the arrangements for cultural agreement with Quebec on some early occasion. He has in mind certain situations there whereby he would announce arrangements, and this is being carried forward by the Minister of Education.

Incidentally, I think it is bound up with

other rather interesting developments to which we have seen reference recently in the newspapers with respect to France. I refer to the agreement signed between France and Canada in cultural matters, within the context of which arrangements are possible by the provinces. I think, therefore, we may see something of even broader scope than we have discussed with Quebec.

He did ask me particularly on one final point, to assure the Committee, both with respect to the cultural agreement and in general, that although matters sometimes moved slowly in Government, as we know, that there were various reasons for this; and to reiterate to the Committee the appreciation for the work it is doing and for the recommendations that are forthcoming.

Turning to another sphere, the question of the approach we should take, if any, to considering the matter of the Ottawa Federal District:

Mr. Stevenson and I met recently with the Deputy Minister of Municipal Affairs to discuss the Jones report, and the implications of that for the Government of Ontario and for this Committee.

I understand that Professor Meisel has probably spoken in the constitutional sub-committee on the work of the B and B Commission. In that case I think we might report both on the conversation with Municipal Affairs and Professor Meisel in the

constitutional sub-committee. We will come to that in a later point in the agenda in detail.

I may just run over a number of incidental matters here. The paper that was sent out to you from the Canadian Conference on the Arts was of interest to the Symons report, and I have been asked to tell members of the Committee that that in fact was not a final draft of their report and they did not wish it considered in that spirit; that a final draft has to follow the report of the submission by the Canadian Conference on the Arts to the B and B Commission.

Next, if you have read Mr. Robarts' speech on November 9th, which went out with the recent mailing, you will have noticed various allusions to French language instruction in Ontario with respect to the Department of Education. I am frankly not sure to what extent he was referring there to the fact that we were proposing to undertake work, and to what extent there may be work being undertaken independently by the Department of Education. I tried in the last day or two to reach the Minister of Education, but I have proposed to Professor Fox that before he launches into his work in that area, that early in the New Year I would arrange a meeting for Professor Fox and myself with the Minister of Education to clarify exactly what work they may have underway and, in turn, where we could

fit into it.

Professor Meisel, I suspect, will comment too on Miss Way's study at a later point in the agenda, and we also have Father Matte's paper.

The paper that was being done on opting-out by Mr. Flugger of this department, that was only circulated earlier this week to the members of the economic and fiscal committee, because it was a first draft and we had discussed this this morning and he will take that back and do further work on it and, when it is in suitable shape, it will be circulated to the full Committee in the regular manner.

Finally, I have had correspondence recently with Mr. R.M.Byrnes, the director of the new Institute of Inter-Governmental Relations in Queen's University, who had also, at my suggestion, spoken, I believe, both to Dean Lederman and Professor Meisel, about the possibility that that Institute might undertake some work for us from time to time. Mr. Byrnes has given some suggestions to me in a rather lengthy letter, and I think that I should direct that letter to the policy research sub-committee, and we might consider where we would take it from there.

That concludes the general business report I wanted to make. Are there any questions of detail or substance there before we go on to the

work at hand?

In that case I thought we should begin by establishing our new terms of reference, or the terms of reference that the research policy sub-committee might lay before this plenary session. I have asked Professor Fox to report to us on behalf of the research policy sub-committee.

PROF. FOX: Thank you, Mr. Chairman.

I understand these notes that were given to me, went only to the members of the policy research group.

THE CHAIRMAN: Yes.

PROF. FOX: So I will go through them more slowly than I might otherwise have done.

PROF. CREIGHTON: You haven't copies of this here?

PROF. FOX: Did you not get copies?

PROF. CREIGHTON: I haven't got it here.

PROF. FOX: I do not think anyone other than the members of the committee received it.

PROF. CREIGHTON: I have got it, but I haven't got it here. That is all.

PROF. FOX: Prof. Creighton is on the Committee, that is why, but I do not think the others got it.

THE CHAIRMAN: No.

PROF. FOX: We discussed a number of matters on Thursday, October 21st. These are itemized and are as follows:

Firstly, a position paper on the Senate and Second Chambers. It was decided that Dean Lederman should be asked to go ahead with such a paper if he had available resources at his disposal in Kingston. On the other hand, if it was found that it would be difficult to have a paper prepared, if it impeded any more vital research, it was suggested that the subject would not rate that high a priority.

So, point (1): Dean Lederman is asked to go ahead if the resources are available; if not, postpone it.

(2) Paper on existing exchanges between French and English Canada. It was suggested that Father Matte be called by telephone to see if he could have a catalogue of existing exchanges prepared. If he did not think it possible, someone should be commissioned to do this study. I believe that paper has now been distributed this morning, is that correct, Mr. Chairman?

THE CHAIRMAN: It has, yes.

PROF. FOX: Perhaps I need not pause there then.

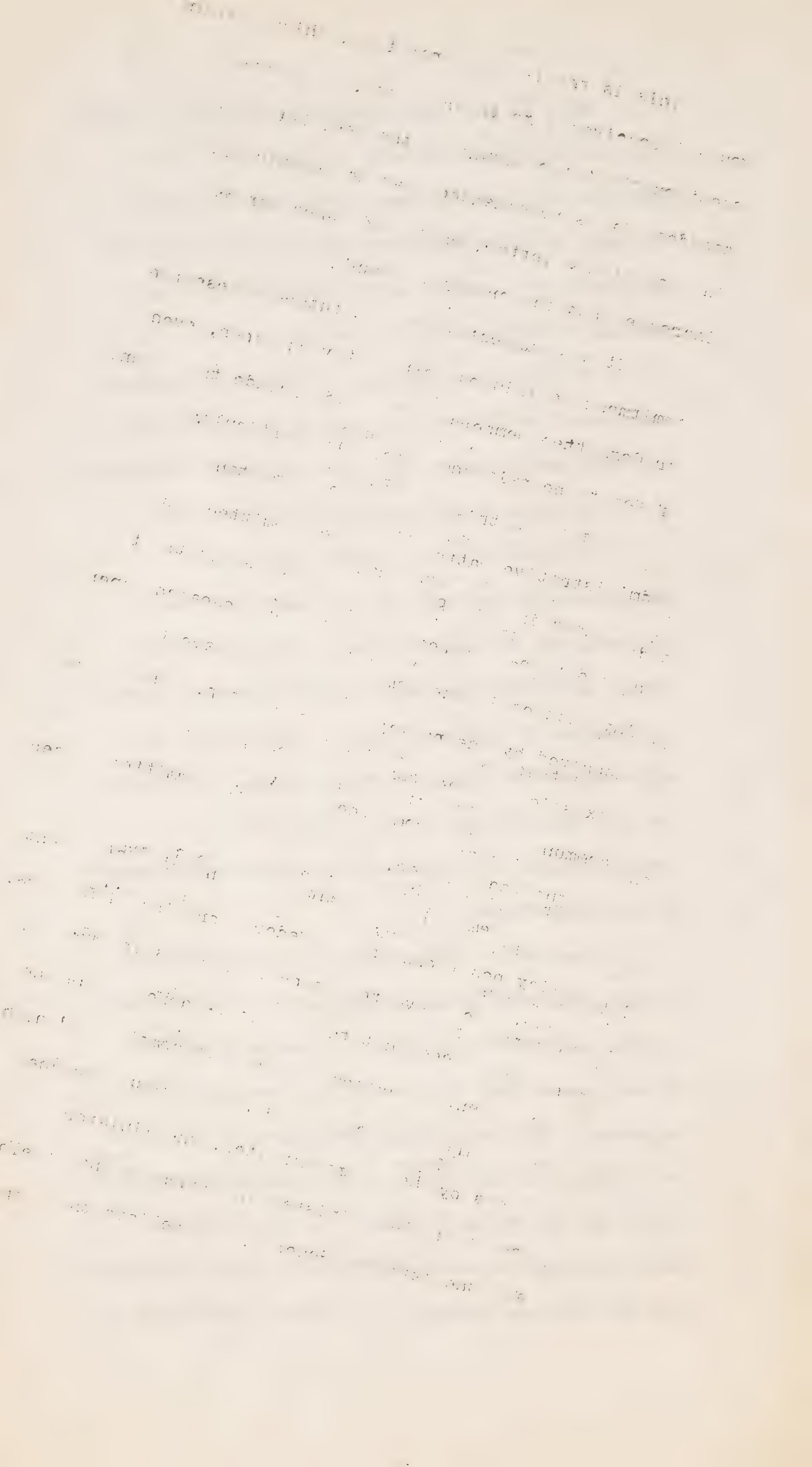
(3) Concerned an item of administration: the fee to be paid to Mr. Leduc for the preparation of his paper on the study of the French language Separate Schools. It was decided that Mr. Leduc would be paid \$1,200 in view of his letter.

This is the Leduc preparation, which I think you all received a month or so ago. I have a question about the amount of the fee, but it was decided, it is recommended that he be paid \$1,200 in view of his letter, which had asked for an increase from the original amount.

It was suggested that in future a research commitment be laid out explicitly on paper, even for Committee members, and would include the amount of fee to be paid and other such particulars.

I think this is a rather important administrative matter, and the Committee was unanimous in the opinion that a quasi contract needed to be entered into for each research paper. Any changes in the commitment would have to be approved by the policy research group. Professor Fox said that he was still looking for communications from other Advisory Committee members on the Leduc paper.

Item (4): Inventory of Ontario Government policy positions on key federal-provincial matters. I think you have this paper. I can skip over it. It was agreed that this would be done inside the Department of Economics and Development, and might be a compendium of points from various speeches and briefs by the Prime Minister, the Minister of Education, the Minister of Economics and Development and the Attorney General. I believe that paper has



been distributed to you this morning.

THE CHAIRMAN: Excuse me, Paul. We will get to that, but this is a highly preliminary beginning to this which is available. Is it being circulated? We will come to that later.

PROF. FOX: (5): Review of existing machinery of Canadian federalism. It was agreed that Professor Brady proceed with this paper which would hopefully be available for the January meeting of the Advisory Committee. I may say the Committee was quite enthusiastic in inviting Professor Brady to do this, and with some reluctance he agreed to prepare a fairly sizable paper on the existing nature of Canadian federalism.

(6): The treaty-making power. It was agreed that some information be prepared in the Department of Economics and Development prior to the November meeting. Again, I think you have received that item this morning, and I need not waste time on it. It was agreed that this did not have to be a complete survey, but should contain as much information as possible about relevant samples of international agreements.

(7) There was some discussion about the form of recommendations to the Prime Minister from the Advisory Committee. It was generally agreed that whenever the Committee reached unanimity on a recommendation, it was desirable to present the

recommendation formally to the Prime Minister (as was the case with the proposed cultural agreement). It was recognized that on many questions it would be difficult to reach unanimity, and that, therefore, the Committee should present to the Prime Minister a list of alternative policy proposals with the pros and cons of each listed.

(8): The future status of Ottawa. It was agreed that the relevant sections of the Jones Report will be sent to all members. Professor Meisel has undertaken to find out the status of any work on this question done for the B and B Commission.

It was agreed that a letter should go to Municipal Affairs asking for a delay in any definite decision on the Jones Report until the Advisory Committee had discussed the problem.

It was agreed that an outsider be approached to prepare a small paper setting out the various questions at issue on the future status of Ottawa. This, I think, is one of the fruitful suggestions the Committee made, namely, that we bring in someone else to prepare a sort of position paper on possibilities re Ottawa status. The name of Professor Donald Rowat of Carleton University and Professor Grant Crawford of Queen's were suggested.

(9): Re the Court Reporter. This is an administrative matter. There was some discussion about whether or not the Court Reporter should be

asked to continue coming to meetings. It was suggested that one of the chief values of the verbatim account was for members of the Committee unable to attend meetings. It was suggested that verbatim accounts might be replaced by the summaries of rapporteurs at a later date when the Committee might possibly operate through all-purpose committees.

(10): November meeting. Straight forward. It was agreed that at the November meeting the specialized sub-committees would meet in the morning, and that the plenary session in the afternoon would deal with the recommendations of the constitutional committee that have been held over, as well as the question of future procedure.

(11): - and this is the final point -- future procedure. It was agreed that the specialized committees would have to be preserved for some time to come in order to clean up research activities. So the committee was recommending and agreeing that we should preserve the present committee structure for some time until present studies are completed.

We did discuss the possibility of all-purpose sub-committees, but it was not decided to institute such committees for the time being.

It was suggested that the Advisory Committee should meet in continuous session for perhaps a

two-day period to hammer out an understanding of some of the major issues affecting the Committee's work. I think this is a rather important point. Two days during the Christmas holidays were suggested but this was not agreed on unanimously. It was suggest that at some of its future meetings the Committee might meet through Friday and Saturday.

Mr. Macdonald suggested a seminar in the spring using Professor Brady's paper as background; that is, the Brady paper on federalism. It was also suggested that questions 1, 2 and 4 from the suggested list that was proposed at the last meeting, might be suitable for a seminar kind of discussion.

Professor McIvor suggested that any seminar should be preceded by a background paper prepared by the staff giving specific questions for discussion and the relevant points that might be touched on.

That completes the report, Mr. Chairman.

THE CHAIRMAN: Thank you very much. Only one point. I would hasten to assure our Court Reporter that the discussion pertaining to him was not because we did not like him, but because we were wondering if this was the most useful form for our own purposes.

There are a number of other points arising here. I suppose we should work through them in

Abstract

order, Paul.

PROF. FOX: Do you want to do that, or do you want me to do it? Why don't you?

THE CHAIRMAN: First of all ---

PROF. CREIGHTON: Senate and Second Chambers.

THE CHAIRMAN: Senate and Second Chambers, and I think it will come out from the report of the constitutional committee, will it not?

DEAN LEDERMAN: Yes, it will.

THE CHAIRMAN: Father Matte's paper should also be referred to by the cultural sub-committee.

The matter arising in connection with Mr. Leduc's study, I think, has been, as represented by Professor Fox, simply that as we were initiating our work this summer we were not really very well prepared to lay down the administrative arrangements for research work; and that in the future it would be better to have all research projects discussed and approved, both in form and in contractual arrangement, by the research policy sub-committee and then carried forward from that point. I think this is an administrative matter, and I trust the Committee would concur in that arrangement.

DR. FORSEY: To be down in black and white, I gather, also.

THE CHAIRMAN: In other words, yes.

Now, the next two points, I think, go to the heart of the matter, and this is where we

Do you want to do that, or do
you want to do this?

I will do
what you want me to do.
I will do what you want me to do.
I will do what you want me to do.

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I will do what you want me to do.
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I will do what you want me to do.

should have some discussion.

Here we come to the point of how we should be proceeding in the long run. I think the feeling of the sub-committee was that we should begin by asking what is the policy of the Ontario Government on a number of questions, and try and set out such an inventory; secondly that under the guidance of Professor Brady, we should conduct a review of the existing machinery and institutions of Federal-Provincial relations, and then try and match these things together and see what grounds there were for change or improvement or progress or alternatives.

The paper which was passed around this morning, I trust, in all groups -- "Some Notes on Statements Made by the Ontario Government ..." was only a very preliminary and cursory glance at some policy questions and some statements. This is work which will go on within the Department of Economics and Development and will need, I think, indeed to become rather comprehensive before we can really tell what the policy is. In other words, this was a new approach to the work we have been doing; not to dismiss the approaches we have been taking or the papers we have been doing, but rather to give us a slightly different focus that might enable us to come more quickly to grips with policy questions this winter, because I think this

is the time we are going to have to advance ideas.

DR. FORSEY: May I ask whether we have to take these declarations of Ontario Government policy as the laws of the Medes and Persians; or is it open to us to say politely to the Prime Minister: "We think this particular announced policy is of somewhat dubious merit"?

For instance, I notice here this provision for provincial government representation on the Board of Directors of the Bank of Canada. That, I think, is about as mad an idea as it has been my misfortune to see; or, to use Borden's terms: "One of the most absurd propositions ever to have come to my attention". Are we stuck with it or are we ---

THE CHAIRMAN: I think we are entitled to make any observations we care to make to the Ontario Government. Indeed, I suspect the Prime Minister will be both surprised and disappointed if we did not -- provided we have a good sound basis for the position.

DR. FORSEY: Yes, quite.

PROF. McWHINNEY: This is a fascinating statement in the last paragraph, Mr. Chairman, the statement on "Division of Power". As Eugene Forsey says, this has a naive kind of ring to it. Can I interpret the categorical imperative as meaning that Ontario expects the new concurrent

I have been thinking of you very much lately
and wondering how you are getting on.

I hope you are well and happy. I have been
very busy lately, but I have managed to find
some time to write to you. I have been
thinking of you very much lately and
wondering how you are getting on.

I have been thinking of you very much lately
and wondering how you are getting on. I have
been very busy lately, but I have managed
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powers thesis of federal interpretation which Supreme Court has to some extent reflecting in its more recent decisions, and a pragmatic re-writing of the B.N.A. Act through a gloss on the textual provisions -- would that be a good provision?

THE CHAIRMAN: I have no doubt that the passage was drafted by economists; and I doubt therefore that it contains any constitutional wisdom.

PROF. McWHINNEY: Except that we are conceptualizing our choicest options in economic terms. If we look at the "comparative advantage" it reminds me of what Trudeau calls "qualification of the social costs of alternative constitutional proposals" we are borrowing from long ago because it is more precise than ours.

PROF. CREIGHTON: Mr. Chairman, isn't this the point that the thing really tells us hardly anything.

PROF. McWHINNEY: It needs concretizing in terms of special principles. I guess that is what we mean rather than the first statement which is rather harsh.

PROF. CREIGHTON: On taxation it begins with a sentence which is overwhelming in its implications really:

"should have tax access that permits us
"to raise nearly all of our own revenue".

DR. FORSEY: It certainly is overwhelming.

PROF. CREIGHTON: It is rather a mouthful.

DR. FORSEY: And this last paragraph on the division of powers that Professor McWhinney has just been talking about, as a simple Newfoundland fisherman, is simply incomprehensible. I do not know what it means.

PROF. McWHINNEY: Does this taxation business mean that Ontario, for example, thinks there should be a revision of the 91-92, to give the provinces power over indirect taxation, for example? Would it clear up the confusion as to sales tax and things which have been waffled around by judicial decisions and others?

I mean, this is where policy statements of this sort are very valuable if concrete and precise. I would interpret this statement on tax as meaning that. Am I wrong in such a conclusion?

THE CHAIRMAN: There are two thoughts expressed there. There is the question "should have tax access" which I suppose means what it says, but could refer to access to moneys raised by taxation either directly or from federal-provincial agreements.

Again, "raising nearly all of our own revenue" we could apply to raising it directly from the people in the province, or raising it through federal-provincial agreements.

the first thing I noticed when I stepped out of the car.

The air was cool and fresh, a pleasant surprise after the heat of the car.

I took a deep breath and felt a sense of relief.

The driver, a young man with a friendly smile, looked at me and said, "Welcome to the city."

He then turned the car around and drove me to the hotel.

I thanked him and he waved goodbye as he drove away.

I knew that I was in good luck.

The hotel was a beautiful building with a long history.

It was the perfect place for me to stay.

I had heard that the hotel was the best in the city.

Now I knew why. The hotel was indeed the best.

I had found a great place to stay.

I was in luck. The hotel was indeed the best.

I had found a great place to stay.

I was in luck. The hotel was indeed the best.

I had found a great place to stay.

I was in luck. The hotel was indeed the best.

I had found a great place to stay.

I was in luck. The hotel was indeed the best.

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I was in luck. The hotel was indeed the best.

PROF. McIVOR: I think it would be wrong to suggest that this statement has any necessary implications about particular sources of revenue or particular ways in which the tax field should be shaped. Is that not so?

PROF. McWHINNEY: Policy statements are loosely, we understand, primary principles, and they are necessarily on a very high level of generality and abstraction, but at a certain stage you have got to concretize the idea and use it in answering a specific problem such as must come out of this, or they are not very much help.

DR. FORSEY: Especially when you get this first sentence on taxation: "should have tax access" whatever that means -- "that permits us to raise nearly all of our own revenue".

And the first sentence on fiscal policy:

"On the other hand the province feels

"that fiscal autonomy should remain

"with the federal government".

I do wish whoever is responsible would consult the English dictionary or get an interpreter, consult anyone.

I may say, in defense of the English language, I hope in the proceedings of this Committee we shall not again have the word "hopefully" used. I mean, we hope because it means a hopeful frame of mind. So when you get a

statement that "a paper on such and such, which hopefully will be ready by January" it is American, German, but it is not English, and I hope it can be expunged from the proceedings.

But this document is full of gibberish, statement of policy; it is not English at all. I do not understand it. I cannot make head or tail of it in some cases.

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PROF. McIVOR: You are not the first person today who has raised these observations.

DEAN LEDERMAN: Mr. Chairman, this business of taxation, it seems to me that perhaps this is the same point that Professor McWhinney is making -- I am not sure. It seems to me usually nothing which is complex can be carried very far in a few sentences. I see two propositions in collision here. One is that it is a principle of fiscal management that a government which spends money should have the responsibility of raising it. They are then more careful about how they spend it if they have to take the political consequences of raising it. That is the argument for the province having to raise all the money which it spends, or any government. But the other proposition is -- and the Premier is recorded as having made this proposition too -- that the Federal government, the National government should have in its hands the levers it needs to manage the national economy.

I am not an economist, but it seems to me this means it must control national taxation policy to a very large extent. In other words, this means very likely that the national government, in order to use taxation to control the national economy, is going to have to raise a lot more money than it is going to be spending, and transfer that money to the provinces.

There are two propositions in collision. Some kind of equilibrium has to be established between them, and that issue is hidden by the paragraph rather than brought out by it.

PROF. McIVOR: You are not suggesting that you are surprised by these inconsistencies in the statements of government policy?

DEAN LEDERMAN: No, but I am not sure that these are inconsistencies; they are only part of the picture.

PROF. McWHINNEY: Did the general principles come inductively in particular problems that the government has considered? Has somebody conceptualized the government position on a number of specific areas, or is it the other way around? Has the government really generalized positions only on these areas, and is it our function to fill in the particular details?

For example, if I were given such a norm as this on taxation, and told what concrete policy

the government had here, would I, as a lawyer, fill them in? I could do it, I think, with the tax statement, if I relied on my interpretation of what it means.

Similarly with division of powers but lack of general policy statements. They have something of an arid statement about that necessarily, but would it be the government's wish for us to fill in particular detailed recommendations flowing from this?

THE CHAIRMAN: I see it is going to develop into a rather brutal business, and perhaps that is all right.

We began by thinking in the sub-committee, I believe, that we should work towards some explicit statement on government policy in areas of federal-provincial relations. This paper represented a beginning of an approach to that goal, of simply picking out statements which appeared to represent government policy.

Now, some of these -- for example, the trend of monetary policy, is taken from a provincial submission to a federal Royal Commission. Others are taken from the Prime Minister's statement at the Federal-Provincial Conference this summer. These, in other words, are made as responses to particular situations on particular points.

I doubt very much, therefore, that they

can be considered as part of a composite package in which the relationship of each part to the other has been necessarily considered.

However, whereas I do not know if there has been any other instance in history where a government will have exposed its policy to the critical examination of a group of this kind quite as closely, I think that is within our scope to take these statements and to do exactly the sort of thing we are doing today: to point out potential inconsistencies, to point out areas where there is not clarity, and to represent those opinions to the individual, and then those of us who in turn in the Civil Service community have to work on the day-to-day material for presentation to the government will profit, I am sure, from this guidance.

DR. FORSEY: It may go a little beyond what you have suggested already. It may be necessary at some point -- and this is why I asked the question I did -- it may be necessary at some point to say: "We think this is a mistake".

THE CHAIRMAN: Right, I quite agree.

DR. FORSEY: That possibly whoever made the statement in the first place did not really think out the consequences of it, and tossed this off on the all too popular principle of "speak now and think later" and, faced with the consequences, might find himself in a very nasty box.

PROF. MEISEL: I think the impetus for this document came from the wish to find out what the government was saying and doing; and that we originally started really by wanting to find out whether there were inconsistencies in the statements, and also whether there were inconsistencies between statements and actions.

I think we should consider this at the present time as a general piece of information which tells us what is being said and what is being done; and if we get alarmed at any of these, then I think we should express our reaction to either the statements or the actions.

THE CHAIRMAN: I would add a third point to the two you have made: whether the policy, in the judgment of the Committee, appears to be leading in the direction, in terms of confederation, that the Committee would believe to be a wise direction.

DR. FORSEY: For instance, take this business of provincial representation on the Board of Directors of the Bank of Canada. This will mean, presumably at least, ten provincial directors. The larger provinces are likely to say: "This is absurd to give us only the same representation as Prince Edward Island or Newfoundland"; or Nova Scotia or New Brunswick and the Atlantic provinces are likely to say: "Well, if you are going to give

those people extra representation here, you will just be loading the dice even worse against us than in the past".

You would get into a very queer situation indeed. You might also make the Board of Directors a most unwieldy size.

Whoever thought this up in the first place thought: "This means one Ontario Government director on the Board and this will be an enormous improvement" and never stopped at all to think that there would be a whole lot of other provinces who would want to be in on the thing too.

Theoretically it provides for that, yes, provincial government, but whoever it was, did he really think what consequences there would be and how many beasts would be let loose in the arena at once?

MR. GATHERCOLE: Mr. Chairman, the discussion probably arises from the rather fragmentary nature of the notes that have appeared in this statement, rather from being criticism of the Government of Ontario's policy.

Now is this not correct, that it was an excerpt from the submission of the Government of Ontario to the Royal Commission on Banking and Finance, and a submission that was presented by Mr. Macaulay, and I do not know whether Mr. Macaulay had discussed it thoroughly with the

Prime Minister at the time it was presented or prior to when it was presented; but I would think that perhaps there was no discussion of that submission, and therefore it may be that we are attaching more importance to that particular excerpt than is justified.

Having served with the Government myself for seventeen and a half years, I cannot recall the Prime Minister at any time making an observation of that kind.

So I just leave it that I did feel some of the discussion seems to reflect the rather superficial and fragmentary nature of the notes that were prepared, and they do not represent a really carefully prepared statement of government policy on a number of very vital and important matters.

Now, in saying that, I do not intend to criticize whoever prepared that, but rather to indicate that it is a sort of preliminary statement; and maybe from this, in the light of the discussion, something further could be done which would spell out in greater detail what the government's policy has been on a number of these vital matters, which this Advisory Committee then might discuss just from the standpoint of throwing some additional light on these matters which would be helpful to the Prime Minister and the Government.

DR. FORSEY: That would apply, I think, to some other parts of this thing, but it does not seem to me to apply at all to this one statement about the directors of the Bank of Canada, which is one of the few places where the thing is absolutely specific and comprehensible. It is a perfectly plain statement, and you could expand it until you were as old as Methuselah and add to it a comment or so, but you would not have got one step further forward in the making of it, because you are left with an extremely vague statement which might mean anything or nothing; but here you have got something very flat, positive, distinct and specific.

PROF. McIVOR: Mr. Chairman, part of the trouble is that this may be very positive and specific; yet it may appear as one of the less reliable representations of government policy, and there is no reason to assume this does represent the policy of the government at the present time.

DR. FORSEY: But it is on record.

PROF. McIVOR: It is on record, but I question whether it is of record. This may be fragmentary, this whole document, not only in the sense that many aspects of government policy are not here, but unreliable in the sense that some of the things that are represented as government policy may not in fact be.

I think that our function, assuming that

we can understand the implications of what is stated as government policy, is to try and fill in the details in relation to the implications of the policies and then to analyze and assess them.

MR. MAGONE: Mr. Chairman, like Professor McWhinney and Dr. Forsey I am troubled about the interpretation, particularly in connection with this taxation matter.

PROF. CREIGHTON: Hear! Hear!

MR. MAGONE: I would have thought that this is fairly clear, and that the Ontario Government thinks it should have access to permit us to raise nearly all of our own revenue.

Now, if that is so, that is a pretty definite statement of what they think they should get as an amendment to the British North America Act to allow them to go into matters of taxation, that they have not now got.

DEAN DILLON: It seems to me it is a waste of time to discuss matters of this importance on the basis of statements which are taken out of context.

I understand, for instance, that the paper from which this statement on the Board of Directors of the Bank of Canada was taken, does not support this statement in any way.

PROF. FOX: I wonder if I can make a suggestion at this time. It seems to me we are into the very heart of the whole matter here. It

is a very difficult and involved field, even this aspect of it, which is economic; and I suggest, for the attention of the members of this Committee, that we are not going to be able to get through it with any positiveness today, and we might well consider not this paper at this moment, but set it aside to consider it in the light of the further circumstances that are included in the report that I read at the end; that we should set aside time in the very near future for a very thorough review of the position of the members of this Committee on the basic problems of Confederation, and that that should be the benefit we get from the submission of this paper today.

To try to resolve each difficulty now seems to me insuperable and impossible really, especially in the light of the fact that we want to get on to the treaty-making power and so on.

I would suggest we drop it and move immediately to the last item, which was the proposal for a further review of our basic position; put our position seriatim on the three other points, and come to the item about future review at a longer session.

THE CHAIRMAN: Gentlemen, this document that was passed about today had only two purposes in mind. One was to be able to sample the question whether this type of approach would be

fruitful, and I think we have our answer on that; secondly, to illustrate some of the types of issues that arise in this type of exercise.

PROF. McWHINNEY: What was your conclusion on the first point as a matter of interest.

THE CHAIRMAN: I take it from the degree of interest and the degree of various opinions expressed, that there would be considerable interest in following through this type of examination of policy considerations.

PROF. McWHINNEY: Yes, I hope you do not think it was negative simply because of the writing of it.

THE CHAIRMAN: No, I do believe that this is a matter which is delicate and must take some time to prepare and must be prepared thoroughly and properly.

The only purpose I wanted to have this afternoon in having a few minutes on it, was to give us and our staff work some of the benefit of the degree of complication that this thing is going to involve, trying to get at policy, trying to spell it out.

PROF. CREIGHTON: Mr. Chairman, surely it is a little mistaken to suggest -- at least this seems to me, and it has been suggested -- that the matters coming up, for example, under the first heading of "Taxation" have appeared for the first

time before this Committee; because surely we also have, through two of these research papers, a very formidable paper on the shared-cost programmes which are going forward at the moment, and also a very large paper on the opting-out provisions, and that it is not the first time that we have been confronted with this particular problem at all.

Am I right in thinking that it was thought that this was in fact a new approach which was brought up for the first time? I do not think this really has been.

THE CHAIRMAN: I do not think the problems were involved in the new approach, but I thought the consideration of what the present government policy was was a new matter.

PROF. CREIGHTON: But, I mean, we might have reached them through our respective procedures just as well as through this particular one, might we not?

THE CHAIRMAN: Yes, that is true.

PROF. McWHINNEY: The opening sentence, as Mr. Magone has said, if we interpret it the same way, it is a very affirmative, philosophical position, if you wish, in relation to taxing power in federal constitutions, as I interpret Mr. Magone, bearing very important consequences from them. It is immensely helpful if the statements are being borne out, and they are not for the press, if

these statements are clear as to what they want. I believe it is immensely helpful to the Committee to have them, and if I am correct in the interpretation which Mr. Magone and I have made of these, really very much simplifies the technical business of preparing constitutional supports for the Ontario Government.

Similarly with division of powers, I make an interpretation of that which certainly gives me policy norms of very great importance in shaping future recommendations.

Dr. Forsey raised the issue whether we should discuss the norms themselves. Certainly that, I take it, is within our province; but I think it is very helpful to have these things if they are clear and not simply, say, newspaper statements which often are deliberately ambiguous and cloudy -- perhaps usually.

THE CHAIRMAN: Am I correct in believing that the Committee support the general approach to this policy question, of preparing a study of the present policy positions in their full context and full meaning?

I think we might go on to the final procedural point which Professor Fox raised. Would you care to go over that ground again.

PROF. SYMONS: It has been suggested at the policy committee that we have now reached the stage

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in our proceedings where it might be useful to concentrate in longer sessions than we now have available in a two or three hour stretch, to discuss in detail what is our appreciation of the present nature of Confederation, and where Ontario should stand in that respect.

So it was proposed, though there was not unanimous approval, that it might be wise to have a two-day meeting, possibly over the Christmas holidays. I do not think myself the date is important; I think the idea is the important thing, but that we need very concentrated work in situations such as we are now in to work in detail on some very basic issues; so that, divided or not, at least we have cleared the ground and then we save time in the future.

PROF. McIVOR: Mr. Chairman, I think this would be a most helpful thing if we could manage to plan perhaps two days or a weekend together, to get at some of the big questions that we have been rather skating around.

I think it has been very useful in the last six months or so in which the Committee has been at work, that we have not rushed right on this core question; that it has been necessary that we size them up and that we develop working relations with one another as members of the Committee.

I do feel that we have moved now to the point

where we could enter the next phase, and we could discuss directly two or three simple questions that need to be discussed and that we have been skating around a little bit so far.

THE CHAIRMAN: Well, am I correct in thinking that in such a meeting we should be equipped in all respects? First of all, we should have, and have had time, to sort of absorb this policy document such as it will be; secondly, we should have Professor Brady's paper and study on the existing machinery of institutions, which is going to attempt to provide a survey, as it were, of the status of the problems at the present time.

Professor Brady, incidentally, hoped to make some progress on that during his sojourn in the West Indies. I have a letter in which he commented on the soporific conditions under which he was working, which I took to be a gentle way of saying: "Do not be too strict about the timetable".

However, if we have those two points to focus upon to engage in a more relaxed discussion over a period of time, I should think we would then be in a position to enter into a second seminar, as we have discussed, with the Prime Minister and some of the principal members of the Cabinet, and open up a good exchange of view.

DR. FORSEY: I think it is an admirable idea. I wonder whether we will really be in a

position to do an effective job as early as Christmas or the New Year period. I am a little doubtful of it.

THE CHAIRMAN: I would doubt it too.

PROF. FOX: I would change my view in the light of subsequent events since our policy committee, and if there is a further study coming forward from Dr. Matte which could be fitted into the general meeting, it will have to be later too.

DR. MATTE: We were planning in the constitutional sub-committee to come back in December on the 3rd and on the 10th, and would be in a position to report to you with adequate prepared material next month. We were planning to meet on the 3rd or 10th.

MR. STEVENSON: 11th.

PROF. FOX: We thought we might have something to lay before you by the 11th on one of these broad topics, and that might help put us to a two-day session later.

I think it hinges on whether Professor Brady can present his paper, because I feel strongly, with Professor McIvor, that we should have policy papers and not simply wander around.

THE CHAIRMAN: Yes, we have to have a focus; we must have a focus.

DEAN LEDERMAN: Do we need to have our December meeting as usual? The two-day session

will come later, not, I hope, between Christmas and New Year's.

THE CHAIRMAN: I do not really think we can possibly be ready by then.

DR. FORSEY: I do not think so. I think it is probable there may be more material issuing from our sub-committee which should be available for a two-day session. This may be too sanguine a feeling, I am not sure. You will be hearing doubtless in due course some other matters that raise fundamental questions that can come up before a two-day meeting.

PROF. McIVOR: Mr. Chairman, I am not sure I understood Professor Creighton correctly, but on the basis of these two general documents that you were issuing on economic background, taxation and opting-out provisions and so on, I am not sure whether you were suggesting that on the basis of those having been circulated, the Committee might now usefully proceed to adopt, we hope, an agreed position.

PROF. CREIGHTON: I am not suggesting that at all. I am just suggesting these things had already emerged in our literature before this was presented.

PROF. McIVOR: Then our discussion of these bits of Ontario policies simply reinforces the point, I think, that from the economic sub-group we should certainly try to work through this great morass of issues.

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PROF. CREIGHTON: Exactly.

PROF. McIVOR: And prepare a policy position which we likewise might put before the entire group when we came to this two or three day session.

THE CHAIRMAN: Yes, I really think it is awfully difficult, in the fashion in which we are meeting now, to have sufficient time in the whole group to come to what are going to be these fundamental conclusions.

PROF. CREIGHTON: Are you implying that we ought, as has just been suggested, to meet in committees next time almost entirely? It seems to me that this programme here would occupy the economic and fiscal committee's time for the whole two days.

PROF. McIVOR: That is quite right.

PROF. CREIGHTON: Or whether this should be done in all-purpose committees. I do not know.

THE CHAIRMAN: Did I understand you that the December meeting, the regular December meeting on Friday, December 17th, would be a two-day meeting of the sub-committee from which we would try to get in a better position to produce material for a seminar type of meeting later?

PROF. CREIGHTON: Professor McIvor said that and Dr. Matte said this.

FR. MATTE: Our sub-committee was even planning to meet before that date.

PROF. FOX: However, that would be a possible

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alternative, for our sub-committee to meet on the 17th.

FR. MATTE: Yes, the full day.

PROF. FOX: And devote the full day to sub-committee work, and be prepared for a more extended discussion in plenary in January.

FR. MATTE: I am in favour of that.

THE CHAIRMAN: Well, it would seem that the economic and the cultural committee have enough to sustain them in sub-committee through the day of the 17th. Is this true of the constitutional committee?

DEAN LEDERMAN: I do not know the answer to that at this point, Mr. Chairman.

DR. FORSEY: I think I am at least prepared to guarantee that I will produce my paper on the monarchy, which I suspect might occupy you for some time.

PROF. McWHINNEY: Then we will be occupied for several days on the 17th.

THE CHAIRMAN: I suppose one approach is to say we will meet in sub-committee on the 17th and the committees will meet separately, and they will go on as long and as briefly as they require, and if others wish to move into other committees for the rest of the day so much the better.

PROF. CREIGHTON: But no plenary session.

THE CHAIRMAN: No plenary session. If that

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is agreeable, we still have to consider whether we could be prepared in time for a two day meeting in the neighbourhood of the normal January meeting. I would doubt, as far as Professor Brady is concerned, that he would have time to prepare his paper (and it would need to be circulated) and that we would have had time to digest it before the meeting.

DEAN LEDERMAN: Mr. Chairman, on the point of what it is Professor Brady is going to do, I am a little confused. He was commissioned earlier to do a paper on Dominion-Provincial Conferences. This is a wider paper. This is a paper on all the major areas.

7 THE CHAIRMAN: Yes. This is not to replace the other. He has still undertaken to finish his work on that paper, and to try to have both of them, as I understand it.

PROF. FOX: May I make the suggestion, Mr. Chairman, that we leave until the December 17th meeting, a decision on what we will do in January, because we will not know until we have had our meetings on the 17th to what point we have advanced for plenary discussion.

THE CHAIRMAN: We won't figure on the 17th to be meeting in plenary, but what we can do, we can take a poll of the three committees and have the research policy committee make a decision on

the basis of the polling of the three committees.

PROF. McWHINNEY: If you are thinking of a two-day meeting, it would be very helpful to have some tentative indication of dates, if it is at all possible, as we have to make commitments to give lecture dates.

THE CHAIRMAN: I had that in mind. I think we should leave open the possibility of a two-day meeting in conjunction with our regular January meeting, which will be Friday, January 21st.

The question is : what would your wish be, to set aside Friday January 21st and the following Saturday, or to meet on the Saturday and Sunday and have a weekend meeting? Is there any preference there?

The only suggestion I can make is that if we have made our timetable available generally for the third Friday of the month, we might as well use it and use the Saturday and preserve the Sabbath.

DR. FORSEY: I am rather dubious that even in January we will have as much ready as we should have for a two-day meeting.

PROF. McWHINNEY: If we have a meeting, and I assume that might have to be left to December 17th, it would be either the 20th or 21st, or 22nd and 23rd -- that is, if we have a two-day meeting in January.

THE CHAIRMAN: Let me put the suggestion

forward and you shoot it down if you do not concur. Would you be agreeable to leave January 21st and January 22nd as two dates for a two-day seminar meeting?

DEAN LEDERMAN: That is Friday and Saturday.

THE CHAIRMAN: Friday and Saturday.

DEAN DILLON: That point can be confirmed.

THE CHAIRMAN: That can be confirmed on the 17th. Is anyone very unhappy with that? I think we should do that.

PROF. McWHINNEY: If that fell through and went over to February, the understanding would be, again, that it would be the Saturday following the third Friday?

THE CHAIRMAN: I would so propose. All right, I think now we should get on to the main business in the sub-committees. Constitutional committee. Under this heading we will also consider the Federal District, I think.

DEAN LEDERMAN: In reporting on what we considered this morning, Mr. Chairman, we thought that, dealing first with the matter of the study on the Senate and Second Chambers generally, we discussed this at length. So far as I personally am concerned, I just do not have the time to do anything major in the next few months in the way of preparation of the paper and up-to-date knowledge on Second Chambers. This is not close enough to

the centre of my activities in recent years that it is at my finger tips. We felt though that something major ought to be done in this field in the way of study.

Professor Meisel will know better than I do on this point. It would seem to me that Professor R. L. Watts at Queen's is a specialist in this field. He has been working in the field of comparative federalism for some time now, including the role of Second Chambers in federal states. We thought that what we could do was a major paper on Second Chambers generally, including continental Europe -- Second Chambers, that is in federal states. I think probably he has the materials and the files and the knowledge much closer to the forefront of his mind than anyone else of whom I know. That does not prove there are not others, of course.

So our suggestion there is that it might be useful for the Advisory Committee to commission Professor Watts to give us a major paper in depth on the role of Second Chambers generally in federal systems, bearing in mind particularly the suggestions about the Second Chamber, the Senate, that are coming out of French Canada these days.

Then we thought also that there ought to be a second major paper on what you might call the two-nations theory.

Dr. Creighton pointed out that this is one

of the fundamental themes that underlies all our problems in the province, that we are dealing with the idea that there are two nations in Canada, and the whole historical perspective of this, what it has meant and so on -- a study in depth, and that this study is needed.

We pressed Dr. Creighton that he was the person to do this, and I think he is agreeable to doing it. It would be on the footing, again, that this would be a major study in depth, and might take months.

Also we thought that Dr. Creighton was in a better position than anyone else to give us rather quickly a short paper on the Canadian Senate; why it is what it is and its present situation in the Canadian Confederation.

So that is the disposition we have made of the Second Chamber, Senate matter, Mr. Chairman, as a matter of making recommendations.

I just mention quickly the other matters we dealt with. As far as the problem of treaty-making powers is concerned, we had before us a short study on international agreements and arrangements in which the Government of Ontario was involved. This was admittedly a short sampling and not a complete study. Mr. Russell of your staff prepared it, and we thought it was very good as far as it went, and we would like to wait another month and have it

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beefed up and do a considerably fuller study.

For instance, the Department of Highways and the Department of Lands and Forests need to be canvassed about the extent to which they are involved in arrangements of this kind.

So as far as exploring the extent to which the Province of Ontario is engaged in informal or outside international agreements of some kind, we were hoping that with Mr. Russell's work up to that point, we exhorted him to carry it further and give us a fuller study without necessarily trying to be completely exhaustive about every single thing that might fall into this category.

We discussed the question of the administrative use of French in Ontario. Do you want to get into that at this point? We discussed it really from the very legal and constitutional point of view. We did not get into other parts of it very much. We are not ready to take any position on the merits, so to speak, but we did discuss the bare legal position.

The bare legal position in Ontario is found in part in Section 133 of the British North America Act, which says that the federal Parliament and Government of Canada are to be bilingual officially; that the courts and the legislature in Quebec are bilingual. That is about as far as Section 133 goes.

the first of the series of experiments was made on the 1st of June 1891. The object of this experiment was to determine the effect of the temperature of the water on the rate of the reaction. The results of this experiment are given in the following table.

The second experiment was made on the 2nd of June 1891. The object of this experiment was to determine the effect of the concentration of the solution on the rate of the reaction. The results of this experiment are given in the following table.

The third experiment was made on the 3rd of June 1891. The object of this experiment was to determine the effect of the volume of the solution on the rate of the reaction. The results of this experiment are given in the following table.

The fourth experiment was made on the 4th of June 1891. The object of this experiment was to determine the effect of the nature of the solvent on the rate of the reaction. The results of this experiment are given in the following table.

The fifth experiment was made on the 5th of June 1891. The object of this experiment was to determine the effect of the nature of the reactants on the rate of the reaction. The results of this experiment are given in the following table.

The sixth experiment was made on the 6th of June 1891. The object of this experiment was to determine the effect of the nature of the catalyst on the rate of the reaction. The results of this experiment are given in the following table.

The seventh experiment was made on the 7th of June 1891. The object of this experiment was to determine the effect of the nature of the medium on the rate of the reaction. The results of this experiment are given in the following table.

The eighth experiment was made on the 8th of June 1891. The object of this experiment was to determine the effect of the nature of the reactants on the rate of the reaction. The results of this experiment are given in the following table.

In Upper Canada there is a statute, in Ontario there is a statute, shortly after the formation of Upper Canada, which sets out that English is the official language; but also there is a principle of natural justice about court proceedings where every person whose rights are being tried in judicial proceedings who is not at home in the English language, must be afforded a translation of whatever affects him, whatever his native tongue is. That, of course, would include a guarantee, as a matter of natural justice, that a French-speaking person would be entitled to a translation of the English proceedings, to the extent that it was necessary to afford justice to him.

There is this provision set out specifically in the Canadian Bill of Rights, and therefore it is statutory as a federal matter so far as all criminal proceedings under the Criminal Code are concerned.

Now, that is just an outline of what you might call the bare legal position. We are not attempting to touch on the merits of the general issue of what ought to be done about greater use of the French language or greater guarantees for the French language in Ontario.

We did also discuss the question of the national Capital District and although we had a useful discussion, we are not ready to take any

8 kind of position at this point. We just had not reached the point where we had anything firm or strong to recommend or position to take at this time.

THE CHAIRMAN: There are other matters for us to report on in that connection. Does that complete your report?

DEAN LEDERMAN: That is the end.

THE CHAIRMAN: Thank you very much. I think we had better go back and work through these recommendations or comments in detail.

The first proposal on the papers to be undertaken on the Senate and Second Chambers and on the two-nations theme which the Committee has proposed, is the discussion on these.

PROF. CREIGHTON: May I say a word? I am very reluctant to accept this undertaking, if the Committee decides they want me to do it, on two grounds. The first is personal. Like most people, I have enough to do at the present moment without undertaking anything so large as the paper on the two-nations in particular. For the second reason, I got the distinct impression that you are anxious, and perhaps the Committee as a whole is anxious, or the executive committee at any rate is anxious, to proceed as swiftly as possible on specific issues; and that this may involve a long time and may not really be necessary for the purpose of

this Advisory Committee.

THE CHAIRMAN: I think clearly this particular issue of the Senate and Second Chambers is one that is perhaps not in a high position as a current issue. I stand to be corrected on that.

PROFESSOR MEISEL: Mr. Chairman, I think it is very likely that the Premier of Ontario will have to react in the next two or three years to proposals emanating from the Quebec constitutional committee which will touch on the nature of the Second Chamber and also on this idea of the two-nations theory. So I think it is relevant, and if it takes a long time for these things to get worked out, I think it will be desirable even to start working on them.

PROF. McWHINNEY: If institutional changes are recommended in the B.N.A. Act, and I am not speaking of distribution of legislative powers but institutional changes, the first will be the Supreme Court, it is clear, and the second, I think, will be the Senate because they are the two areas where it is suggested biculturalism can most easily be effectuated in terms of voting power in both bodies.

So I would rank the Senate paper, in terms of institutional papers, immediately after the Supreme Court one which we have already had completed.

The two-nation thing, I think, is important in its own way to a research committee as the policy issue we have been discussing, the policy statement, in relation to shaping recommendations. I think it would be very desirable to have Professor Creighton do this paper if he has the time. I do not think anybody really but Dr. Creighton or Eugene here has really got the background to do that paper. It is in a way a labour of love to ask.

DR. FORSEY: May I suggest about this two-nations paper, that I think it is an extremely important one and that Professor Creighton is the person to do it. I may be able to do a little devilling for him on the thing, and I should be glad if he thinks that would be useful.

I think it ought to be done, and if the thing comes up as a matter of urgency before he is finished, then I think he might just have to give us a short statement of where he had got so far, for the benefit of the Premier, in any discussions. I think we will just have to hope that he would have time to do the thing as he would like to do it, and be prepared, if necessary, to do a very brief interim report if occasion arose.

DEAN LEDERMAN: Mr. Chairman, my feeling is that we are in for a long pull in this Committee on some of these subjects, and we must not shrink from having the senior scholars prepare some

1. The first part of the document is a letter from the President of the United States to the Congress, dated January 3, 1862. It contains a report on the state of the Union and the progress of the war against the rebellion. The President mentions the recent victories of the Union forces and expresses confidence in the ultimate success of the cause.

2. The second part of the document is a report from the Secretary of the Treasury, dated January 10, 1862. It details the financial condition of the government and the measures taken to meet the demands of the war. The report notes the increase in public debt and the need for further financial support.

3. The third part of the document is a report from the Secretary of the Interior, dated January 15, 1862. It discusses the management of the public lands and the progress of the various departments under his jurisdiction. The report mentions the discovery of gold in California and the resulting influx of settlers.

4. The fourth part of the document is a report from the Secretary of the Navy, dated January 20, 1862. It provides information on the state of the naval arm and the activities of the fleet. The report highlights the construction of new ships and the readiness of the navy for service.

5. The fifth part of the document is a report from the Secretary of the War, dated January 25, 1862. It outlines the military operations and the status of the troops. The report mentions the recent battles and the movements of the army, as well as the need for additional resources.

6. The sixth part of the document is a report from the Secretary of the State, dated January 30, 1862. It covers the diplomatic relations of the United States and the progress of the various departments. The report mentions the recent treaties and the efforts to maintain peace and stability in the world.

7. The seventh part of the document is a report from the Secretary of the Education, dated February 5, 1862. It discusses the state of the public schools and the progress of the various departments. The report mentions the efforts to improve the quality of education and the need for further support.

8. The eighth part of the document is a report from the Secretary of the Agriculture, dated February 10, 1862. It provides information on the state of the agricultural industry and the progress of the various departments. The report mentions the recent harvest and the need for further support.

9. The ninth part of the document is a report from the Secretary of the Commerce, dated February 15, 1862. It discusses the state of the commercial industry and the progress of the various departments. The report mentions the recent trade and the need for further support.

10. The tenth part of the document is a report from the Secretary of the Finance, dated February 20, 1862. It provides information on the state of the financial industry and the progress of the various departments. The report mentions the recent financial activities and the need for further support.

fundamental papers and having months and months to do it in, if that is what it takes to do it properly, or if that is what it takes to make it possible for a very busy person to get it in.

In the summer past, we had some good work done, but I think we are all conscious of the limitations of it, either because it was done by students who just were not experienced enough, or because the time for doing it was not what it should have been.

I think we should be in the business of commissioning some quite fundamental studies, allowing the time it takes and, as Dr. Forsey says, take the chance on the issue getting hot sooner. If it does, you can always face it as best you can on an ad hoc basis.

It seems to me that one of the strengths of the Committee is the seniority of some of the members of it, and I do not mean just seniority in the sense of substantive scholarship; and I would hope that we can give the time that some fundamental studies would take. This really is the thinking that is behind these propositions on these two papers.

I know that Dr. Creighton and Professor Watts are both extremely busy people, and on the basis of their time programmes alone they would have to be given many months, I think, to organize this work if they were willing to do it, even then.

The first part of the report deals with the general situation of the country and the progress of the work during the year. It is followed by a detailed account of the various projects and the results achieved. The report concludes with a summary of the work done and the plans for the future.

The second part of the report deals with the financial aspects of the work. It gives a detailed account of the income and expenditure of the organization and shows how the funds have been used. It also includes a statement of the assets and liabilities of the organization.

The third part of the report deals with the personnel of the organization. It gives a list of the staff and their duties and shows how the work has been distributed among them. It also includes a statement of the salaries and other benefits paid to the staff.

The fourth part of the report deals with the results of the work. It gives a detailed account of the various projects and the results achieved. It also includes a statement of the progress made in the various fields of work.

The fifth part of the report deals with the future plans of the organization. It gives a detailed account of the work planned for the next year and shows how the funds will be used. It also includes a statement of the assets and liabilities of the organization.

DEAN DILLON: I agree, Mr. Chairman.

I think this two-nation theory is a topic which could not possibly be more fundamental to the work of the Committee, and for that reason probably it will take so long.

PROF. McWHINNEY: You agree the Senate paper, I think, is a different nature than the two-nation theory, which gets into fundamental questions. The Senate one, assuming Professor Watts is available, can be done in a few weeks. It is really a question of whether the material is in hand. But I think the two-nations theory is not really research but conceptualizing.

DEAN LEDERMAN: It is original exploration, a lot of this.

PROF. McWHINNEY: Yes.

PROF. CREIGHTON: I feel a very great reluctance, Mr. Chairman, and your first remark that you thought the question of the Senate did not have a very high priority tended rather to confirm my reluctance and to strengthen it.

I would only be willing to undertake this if the Committee as a whole think there is an overwhelming need for it, and a very, very strong need for it, because it will involve a terrific amount of work, I think. It may not be, but it could.

DR. FORSEY: I think there is an overwhelming

need, and I agree with what I understood John Meisel to say, that the Senate business might come up quite reasonably soon and in a pretty strong fashion. It may not be possible for even the most adroit representatives of Ontario just to say: "It is a nice day. Let us proceed to something else".

THE CHAIRMAN: Well, I judge that there is strong support on both these matters with respect to your worries, sir.

PROF. CREIGHTON: My worries are doubled.

THE CHAIRMAN: I think we are all sympathetic.

PROF. CREIGHTON: I wish that some of the other members of the Committee would say what they think.

THE CHAIRMAN: I think we heard some strong voices.

DR. FORSEY: There is one you heard, but I noticed Professor Symons was nodding his head.

PROF. McWHINNEY: In a significant way.

DR. FORSEY: Exactly, in an agreeing fashion.

PROF. SYMONS: I hasten to say that there was a general action of nodding. I just could not endorse more whole-heartedly what Dean Dillon and Professor Meisel and Dr. Forsey have said. I think these things are of the most fundamental importance, and it is just essential that this work go ahead. I very much hope that Professor Creighton might be kind enough to undertake it on behalf of the

Committee.

THE CHAIRMAN: May I suggest that we approve this course and ask the research policy sub-committee to deal with the details, both with Professor Creighton and with Professor Watts? Is that agreed?

PROF. McWHINNEY: Can we ask Professor Watts, if possible, to do it on a short term basis.

PROF. MEISEL: We can ask him. I am afraid that he has got a fairly heavy commitment on his hands now, which should be finished, I would think, in a couple of months.

However, the data that he has collected concerns Second Chambers primarily in newer countries, and I think he will have to do some new work on the older countries. It is Africa, new Commonwealth countries that he has emphasized.

THE CHAIRMAN: Well, you might when you see him, John, break the bad news, and then we will be in touch formally.

PROF. MEISEL: I will warn him.

THE CHAIRMAN: Perhaps you had better not. He may get his defenses up.

DR. FORSEY: It is also possible he might have to get the help of a collaborator on continental Europe. He might have a very bright idea for a collaborator.

THE CHAIRMAN: We can negotiate the details. Let us move on to the treaty-making matter.

Here we have the two recommendations to deal with from our last meeting, in conjunction with the Ontario studies as under way. I do not know how you wish to deal with these.

DEAN LEDERMAN: I can perhaps remind the group what it is. On the treaty-making power, last month the constitutional sub-committee arrived at a position which is in the first two propositions here, and what I have said so far relates to the study in the third proposition.

(1) Canada has a single international personality

(2) This single international personality means that only the Government of Canada has capacity or power to make international agreements that create obligations in international law.

Then the third proposition was:

Past practice indicates that there are some informal agreements not creating obligations in international law, between provinces of Canada and some foreign or Commonwealth governmental authorities. There should be a study of the nature and extent of this group of informal agreements, looking to final further recommendation when more is known.

1. The first part of the report deals with the general situation of the country and the progress of the work during the year.

2. The second part of the report deals with the results of the work done during the year, and the progress of the various projects.

3. The third part of the report deals with the financial position of the organization, and the results of the various projects.

4. The fourth part of the report deals with the results of the various projects, and the progress of the work during the year.

5. The fifth part of the report deals with the results of the various projects, and the progress of the work during the year.

This is what I was referring to with respect to Mr. Russell's paper this morning, which was a preliminary paper and short one. We have asked him to give us more of the same, to beef it up, and I hope that will fit in with your administrative arrangements.

As to the first two propositions, this is the position that the constitutional sub-committee was prepared to take. I think it is essentially the position the Government of Canada is taking now. I do not know whether you want to discuss this in substance at this point, Mr. Chairman, with a view to having it go forward as a firm policy recommendation from this Committee to the Government of Ontario; or whether you would want to leave this for this more comprehensive review on fundamental positions.

THE CHAIRMAN: This is the thing that was in my mind, and I was not clear on this, frankly, whether it was the view of the Committee that they would advise that we should deal more thoroughly with the existing practices in a number of areas in Ontario before we are satisfied we have explored all the subtleties of the case.

DEAN LEDERMAN: I think it would be well to wait myself. When we were considering this a month ago, we did not know how rapidly things were going to move, and finally they know. Now we know they

1. The first part of the paper discusses the importance of maintaining accurate records of all transactions. It emphasizes that proper record-keeping is essential for the success of any business or organization. The author argues that without reliable records, it is impossible to make informed decisions or to track progress over time.

2. The second part of the paper focuses on the challenges of record-keeping in a digital age. While technology offers many advantages, it also introduces new risks, such as data loss or cyberattacks. The author suggests that organizations should implement robust security measures and backup procedures to protect their digital records.

3. The third part of the paper explores the role of record-keeping in legal and regulatory compliance. Many industries are subject to strict regulations that require the maintenance of specific records. The author notes that failure to comply with these requirements can result in severe penalties and legal consequences.

4. The fourth part of the paper discusses the importance of record-keeping in financial management. Accurate records are necessary for preparing financial statements, budgeting, and analyzing the organization's financial performance. The author stresses that good record-keeping practices can help identify areas for cost reduction and improve overall financial health.

5. The fifth part of the paper addresses the issue of record retention. Not all records need to be kept indefinitely. The author provides guidance on how to determine which records are essential and which can be safely discarded. This helps organizations save space and reduce costs while ensuring that important information is preserved.

6. The sixth part of the paper discusses the importance of record-keeping in human resources management. Records of employee performance, training, and compensation are crucial for making fair and effective decisions. The author suggests that organizations should maintain comprehensive and up-to-date records to support their HR functions.

7. The seventh part of the paper explores the role of record-keeping in project management. Keeping detailed records of project progress, budget, and communication is essential for staying on track and managing risks. The author recommends that project managers use record-keeping as a tool to monitor and control their projects.

8. The eighth part of the paper discusses the importance of record-keeping in marketing and sales. Records of customer interactions, sales performance, and marketing campaigns are valuable for understanding market trends and improving strategies. The author suggests that organizations should use record-keeping to gain insights into their customers and optimize their marketing efforts.

9. The ninth part of the paper discusses the importance of record-keeping in research and development. Accurate records of experiments, data, and findings are essential for scientific progress. The author emphasizes that good record-keeping practices can help researchers avoid duplication of effort and build on previous work.

10. The tenth part of the paper discusses the importance of record-keeping in the arts and humanities. Records of creative processes, drafts, and finished works are important for artists and scholars. The author suggests that organizations in these fields should maintain comprehensive records to preserve their cultural heritage and support their creative endeavors.

are not going to move much faster than they have been moving.

--- Laughter.

MR. MAGONE: Mr. Chairman, I think we agreed, at least I was under the impression we had agreed, that there should be added to this recommendation some words such as this:

"This recommendation does not touch upon
"the question of amending the British North
"America Act"

because implicit in that might be the question of whether we are saying that all international agreements must be ratified.

PROF. McWHINNEY: I remember those words from the last meeting, and we did have a gentleman's agreement (if we can use that) to insert a reservation of that sort. Indeed, if I could look at the text again I might be able to recollect.

DEAN LEDERMAN: I produced a text and now I forget it. I think it was covered by the statement with the qualification about international law.

PROF. McWHINNEY: I think we did agree, but we also agreed to make assurance doubly sure and put in a specific exclusion. I think it would be appropriate for the reasons we discussed at the last meeting.

DEAN LEDERMAN: I have slipped up then on

what should have been in there.

DR. FORSEY: What was it again?

PROF. McWHINNEY: It was agreement reservation in relation really to labour conventions. I think we simply said we did not pass any ---

DEAN LEDERMAN: Of course this talks of the making of treaties; it does not talk of the implementing of them at all. That was the point we were making.

DR. FORSEY: I thought it was covered in that reservation that Mr. Magone mentioned; was, therefore, in effect covered by the wording there.

PROF. McWHINNEY: I think Mr. Magone's point last month that we discussed, was whether we should not put in a saving clause making it specific. I felt at the time, for the reasons he advanced, that it was sound. I felt we had reached a consensus on that.

DEAN LEDERMAN: Yes, I think it is there implicitly.

PROF. McWHINNEY: I think it is implicit.

DEAN LEDERMAN: But it should be explicit, I agree.

PROF. McWHINNEY: If you could add a statement something like:

"Nothing in the foregoing involves any

"ruling" ----

MR. MAGONE: "--- recommendation on

Page 2

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"amending the British North America Act."

THE CHAIRMAN: I do not like to keep suggesting we postpone. However, there has been the point raised about Ontario practice and Mr. Stevenson reminds me that the present Deputy Attorney General, Mr. Dick, is considerably interested in this question, and has understandably a good deal of current experience on it, as well as with respect to Ontario practices. It might be well that we should invite him to a meeting of the constitutional sub-committee for discussion.

DR. FORSEY: It might even be more useful if Mr. Russell should get together with him before hand and make the fullest possible use of his knowledge and ideas.

THE CHAIRMAN: You might perhaps report day to day on what is going on.

DR. FORSEY: This would help keep us busy for the December meeting.

MR. STEVENSON: I might say we have talked with Mr. Dick twice, once with Terry Russell and once myself, partly because he is the expert on the highway agreements, having been in charge as legal adviser to the Department of Highways for several years; but he also exhibits a considerable interest in the general potential power of provinces to go a little further in the area of subjects covered by Section 92.

Since this seemed to be somewhat at variance with the constitutional sub-committee, I thought it might be useful to have precisely ---

PROF. McWHINNEY: Not at variance. Our statement represents a harmony of views, but I think there are gradations of opinion on the merits and also legal powers of the province to negotiate agreements of a trans-provincial character.

THE CHAIRMAN: What is your wish? Dean Lederman has said quite rightfully that you should have time for more thorough exploration of this with Mr. Dick on the 17th, if you wish to defer this again.

PROF. McWHINNEY: Cannot we adopt it as a preliminary position, and also recommend that Mr. Dick come to our meeting in December?

DEAN LEDERMAN: I do not think there is much use adopting something which we are not prepared to send right on in the form in which we adopt it.

THE CHAIRMAN: My own feeling is (and let me put it quite directly) that I would, rather than running back and forth to the Prime Minister with little bits and pieces, I would rather put something comprehensive down. There is only so much time for this, and I think we should have something that is thorough and comprehensive when we do it.

DEAN LEDERMAN: We have not really tidied

up the part that Mr. Robarts is likely to be
10 confronted with -- people from Quebec saying: "Well,
you have got hundreds of these agreements yourselves.
How can you sit there and say this?" This is the
part he is most likely to be confronted with.

THE CHAIRMAN: As I have already implied,
I think this is going to come up again very shortly
in our own Department of Education, and it is a
matter of some current interest for that reason.

DEAN LEDERMAN: I may just suggest it all
be left over for next month.

THE CHAIRMAN: Does that meet ---

PROF. McWHINNEY: I am sorry. What was your
reference to the Ontario Department of Education?
Are they considering making agreements?

THE CHAIRMAN: We really did not want to say
too much about that, but let me put it this way.
I would not be surprised if the Department of
Education were interested in this question.

PROF. McWHINNEY: Agreement with France or
other countries?

THE CHAIRMAN: Yes.

DR. FORSEY: Not Rhodesia, I hope.

THE CHAIRMAN: May we return that to the
committee?

--- Cries of "Agreed".

THE CHAIRMAN: I think we had better go on
next to the National Capital question, because we

and the other two are the same.

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want to hear from Professor Meisel before he escapes. John, do you want to report on that?

PROF. MEISEL: You remember that I was asked last time to report on what the Royal Commission on Bilingualism and Biculturalism is doing by way of examining the question of a National Capital area or National Capital District. I agreed to do this, provided I could present an oral report rather than a written report. The reason for this is that the Royal Commission as such has, of course, taken no position on this matter yet, and it is slightly improper, I suppose, for somebody in contact with the research being done in the Commission to report to an outside body something that the Commissioners themselves are not yet aware of fully. So what I am going to say is, therefore, somewhat confidential, in that the Commission, as a matter of policy, has not announced to the public what particular research is being undertaken in every detail.

THE CHAIRMAN: Excuse me, John. Would it make you happier if this were off the record?

PROF. MEISEL: I would think so. It does not actually make any difference, but I think it would perhaps be better because of the situation we may get into.

--- Off the record.

THE CHAIRMAN: Now to come to grips with our problem, I am not sure, after this very extensive

report, if we are in any better position to proceed or not; because what they suggested, I suppose, is as we know, that this is a very complex question and a lot of work is being done on it. I think, as Professor Meisel suggested, we should be prepared to anticipate what may come out of this, and to have some position on it.

PROF. MEISEL: I would like to make a suggestion, Mr. Chairman. Why don't I keep track of this and see how these studies are progressing? It will be some months before any of these gets very far, I think; but when certain things are developing which are likely to be bearing on our work, even though perhaps it may simply be some research reports that will not lead to a recommendation but that sheds light on that problem that is of interest, I am sure that informally I could bring this to the attention of the Committee. Then if the time arises we should perhaps do some research of our own growing out of this work and we could then act.

DR. FORSEY: I think that is an excellent suggestion. When this came up in our committee this morning, I did not know the proceedings of the committee are supposed to be particularly confidential, but I can at least say what I felt myself. I was rather reluctant for the constitutional sub-committee to get into this very far at this stage, seeing that all the members of the constitutional

sub-committee were English-speaking. I am French-speaking on Sundays, but this is not quite enough. I felt that we might rather waste our time and go down blind alleys unless we had the French-speaking members of the committee present.

Perhaps our French-speaking lawyer, Mr. Seguin, might give us some idea of what was, from the point of view of French-speaking Ontarians, really important here. We might work at something and say: "This is the kind of thing which would be really important and helpful and make them happy"; and then Father Matte or Mr. Seguin could come along and say: "This is nonsense. We do not care much about that, and the really important thing is so-and-so", and weeks of work are down the drain.

So I feel very strongly that when this comes up in the constitutional sub-committee we should ask to have Mr. Seguin at least and preferably Father Matte also present, so that we know where we are, because with the best will in the world and even if I tried to think myself as much as possible into the position of a French-Canadian, I will be as innocent and ignorant as it is possible to be and the rest of the committee probably not much better, and we might just waste our time.

PROF. CREIGHTON: Mr. Chairman, we obviously have in the Jones Report, a considerable report on one aspect of this problem. Mr. Meisel says we are

likely to get from him further information as the work and the research progresses in the Bicultural Commission. I do not know, I must confess that it seems to me that again we have to postpone decisions upon this matter. I do not see how we can come to any very positive recommendation now, and indeed I do not suppose we are really thinking of doing that, are we?

THE CHAIRMAN: No, I think Professor Meisel's suggestion is the only course available to us. Perhaps I might ask Mr. Stevenson to report very briefly on our meeting with the Deputy Minister of Municipal Affairs vis-a-vis concurrence or lack of it with respect to the Jones Report.

MR. STEVENSON: Well, Ian and I had a chat with Mr. Palmer, Deputy Minister of Municipal Affairs the other day, which followed a letter which was sent to him suggesting that the Advisory Committee had an interest in the whole question, and we hoped that the Municipal Affairs would not act on the Jones Report until this Committee's opinion was sought.

He assured us that it would be some time before they came to any decision on it; that right now they were having quite a bit of trouble with, I gather almost every group of civic politicians in the Ottawa area expressing their opposition.

PROF. CREIGHTON: To the Jones Report?

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MR. STEVENSON: To the Jones Report. We had some discussion as to why this committee was interested in it.

THE CHAIRMAN: Was very interested.

MR. STEVENSON: He expressed a personal suggestion on what he felt would be definitely the policy of the Municipal Affairs Department, against any National Capital area.

THE CHAIRMAN: On traditional grounds of municipal government.

MR. STEVENSON: Yes, very much.

PROF. CREIGHTON: This is the Jones Report that makes that report very strongly.

MR. STEVENSON: Yes, and he certainly thought Municipal Affairs' thinking would support that completely.

As to the bilingual status of Ottawa, he felt most of this did not relate too much to Municipal Affairs activities themselves. We were talking particularly about education studies, but he felt that a lot of this related to general questions which perhaps we might be discussing later, about legal status in the Ottawa area and education. We did not discuss too much about the use of French administratively within Ottawa.

MR. SEGUIN: May I just say a word on the Jones Report. We have studied it extensively; in fact we have had meetings with all French-speaking

representatives, municipally -- one Mayor, some Aldermen and all the School Trustees in the area.

Municipally, we are more or less in favour of it. On the educational side we are opposed to it through the simple fact that in his report he mentions the fact that the Separate Schools should be left alone because they have not got the money to adopt the other systems or to follow the other systems.

If that is the way they feel about it, then we will go the entire way and say: "Well, municipally we will not get on the band wagon either".

On the National Capital idea, we have studied that too, and we have not finished, we have not formed an opinion yet; if we should leave the rest of the Franco-Ontarians on their own or if we should remain with them.

The strength of the Franco-Ontarians comes from the Ottawa region, not from the north nor the west of the province.

School-wise we would be much better off in a national capital position, because we would have the full system of schools, as to bilingual schools and things like that. We are not too much worried about milkmen, I must say, because 90 per cent of them are already French Canadians.

--- Laughter.

DR. FORSEY: This is what I suspected.

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MR. GATHERCOLE: That is why the population is growing.

MR. SEGUIN: But on the Jones report we have a strong feeling against what he says about Separate Schools, to the effect that they are the poor cousins of the educational system, so they should be left alone. We only dealt with what they are doing, and we intend to write the government on this.

MR. GATHERCOLE: Can you explain further -- in the merger of the Separate Schools there, your conclusion is your costs would rise?

MR. SEGUIN: No, it is not exactly that. They said that as far as Separate Schools are concerned, they should be left as they are, and they could not come into the general system of amalgamation because they would not have the money to subsidize themselves. That is the whole contention.

We could adopt the regional school system in the area tomorrow but their feeling is that we are the poorer school system, which is true, and we have not got the most elaborate schools, like the Public School system has; and it was felt that his reasoning or his grounds were to the effect that if we came into a general school system that in our schools, a lot of them, money would have to be spent to make our schools on the same par as the

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Public School system.

MR. GATHERCOLE: Was this related too to the fact that grants for smaller communities are larger than for cities?

MR. SEGUIN: No, because around the Ottawa area there are very few schools that have grants. The Ottawa school is the big one, but the grant system would not say too much.

MR. GATHERCOLE: It is related to the assessment in the community; provincial grants on education are related to the assessment. When assessments are low, grants are higher, and if you amalgamated, you might then ---

MR. SEGUIN: No, we take the distinction on that. It would lower the average grant to a very small amount.

MR. GATHERCOLE: So your objection is that by merging the Separate Schools your costs would be increased?

MR. SEGUIN: No, we are not opposed to merging, but we are opposed to being told that we cannot merge because we are too poor to do it. I will tell you the main reason for it. It is because we do not get any corporation tax. That is the main reason, and they know that.

MR. GATHERCOLE: You would not obtain that if you amalgamated; you do not get it now.

MR. SEGUIN: I know that, but if somebody

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DEPARTMENT OF THE HISTORY OF ARTS

OFFICE OF THE DEAN OF THE FACULTY

CHICAGO, ILLINOIS

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PASSED AT ITS MEETING OF

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wants it to be done, then at the same time they should go the whole way. That is our reasoning on the thing. Otherwise we are entirely opposed to the amalgamation, because at the present time we have a French-Canadian system that is useful. They are opposed one hundred per cent, all the Council is opposed to amalgamation unless they get something for what they have to give. You see, that is the way we are looking at it at the present time. In these populations I think 75 or 76 per cent French Canadian, they say, "We are willing to join our English-speaking confreres in an amalgamation, providing we get something else in return, such as better schools".

DEAN LEDERMAN: The objection to the Report, Mr. Seguin, if I understand you correctly, is that Mr. Jones says: "No amalgamation because it would cost too much money to bring the Separate Schools up to standard".

MR. SEGUIN: Yes.

DEAN LEDERMAN: Up to the standard of the others. Yet, from your point of view, that would be the object.

MR. SEGUIN: Well, the object, I would like to see my school system at the same par as the other schools.

DEAN LEDERMAN: Yes, I would agree with that myself. In your position that is what I would

want.

MR. SEGUIN: But we have not finished on that. We still have two more meetings. Now, you said it will be delayed, so there is not that much rush. 30th November was the date to have all the reports in.

PROF. FOX: May I just ask whether, in view of our feeling that that should be postponed, that we would not continue with studies on a District Commission that it was proposed in the policy research group should be done by Professor Rowat or Professor Crawford.

THE CHAIRMAN: I was going to ask the Committee on that. I would presume that; I do not know. What is your view?

PROF. FOX: Incidentally, just for information, have any steps been taken in that regard?

THE CHAIRMAN: No, not until this meeting had taken place.

PROF. SYMONS: Mr. Chairman, I wonder if we would not do well to follow Professor Meisel's recommendation and kind offer, to ask him to continue to hold a watching brief for us for another few months at any rate.

PROF. CREIGHTON: But if the whole of the B and B Commission investigations are based on the idea of talking to somebody throughout the

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entire day, month by month, person or government, as he meets, this seems to me to be a counsel of perfection and it could not be reached in this world nor indeed in any world, past or to come.

THE CHAIRMAN: I certainly agree. We felt his recommendation, whether we also try and get other work initiated on our behalf, at the same time it is not necessarily excluded by that, is that it?

PROF. FOX: It is my thought, as on the Senate, as with the problems of two nations and so on, that these public issues have a habit of suddenly bursting on a government and the government wants an immediate reaction and opinion of a group such as with them, and you cannot produce instantaneous results of any quality, in my opinion, from a group like this unless you have had study.

Now, that is the only utility. I am not proposing that we do it. I am just saying that if we think there is merit, then maybe we should try and get research done, even when you want it done or even when there is immediate need.

DR. FORSEY: How strongly did representative groups of French Canadians feel about this position on the National Capital? Is it likely to be a serious question? If it is, I think that is one thing; but if we find this is only every fiftieth French Canadian who cares two hoots about it, then it is probably not ---

MR. SEGUIN: As I told you ---

PROF. CREIGHTON: You are undecided, are you not?

MR. SEGUIN: No, personally I would go National Capital. Let us put it this way. Many people would, but the people that are the thinkers in the French population of Ontario, feel that we would be decreasing our number by 100,000 in the province. We do not know what we should do conscientiously that way.

DR. FORSEY: What about the Quebec people? Are they much interested, do you think?

MR. SEGUIN: The Quebec people or most of the people that I have talked to, feel they are more or less abandoned by the province of Quebec in that area. As you know, Western Quebec has always been steady, and I think that it would be inclined to join the Ontario national capital. The Quebec government, on the other hand, has always said that they never release one inch of ground. I have nothing official from any member of the Quebec Government on this.

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DR. FORSEY: I would think it might be playing it safe to have Rowat or Crawford do something on this phase. Of the two, with all due respect to Queen's and Crawford, for whom I have great regard, I should think Rowat might be the better bet, because he would be a little closer to

the situation in Ottawa and a little better able, I should imagine, to get French Canadian opinion.

PROF. McWHINNEY: He is in Africa now, isn't he, Zambia or something.

DR. FORSEY: Rowat, as far as I know, is on hand. He was last week anyway.

PROF. McWHINNEY: That is decisive anyway.

PROF. CREIGHTON: He has concluded his African interest, I think.

DEAN LEDERMAN: There is a distinction between this Committee trying to take a position, which is the thing that we are dealing about on several issues and having basic studies done. I do not think we should delay at all about getting on with the basic studies, because I should say we never know when we are going to need it.

PROF. McWHINNEY: And the research is considerably simpler and less detailed than this Senate project, because most of it is English language source material which would be a relatively short thing to do, even for somebody not experienced in the area; but for somebody like Rowat who has been working at it, this could be done in a couple of weeks.

DR. FORSEY: Rowat knows M----- and presumably could talk to him and pick up things from him. Rowat might say: "Is it worth while pursuing this?" and M----- might say: "All the

indications are that nobody is interested. Forget about it. On the other hand, here is something that is awfully important as far as we can tell".

PROF. McWHINNEY: These are the policy choices Bill is talking about -- form and models. You only state two or three main terms and it is very simple.

PROF. FOX: I would like to see a relatively short paper done fairly quickly by Rowat whenever available, simply outlining the advantages and disadvantages of Federal District Commissions as capitals in general.

PROF. McWHINNEY: In the light of experience.

PROF. FOX: Opting-out problems, local government, court procedure and others, so that we have something.

THE CHAIRMAN: We know what the issues ---

PROF. FOX: Yes, we have a paper for production.

THE CHAIRMAN: Is that agreed?

--- Cries of "Agreed".

THE CHAIRMAN: I think that concludes the constitutional business. I am sorry -- Supreme Court.

DEAN LEDERMAN: This is another matter on which the committee was prepared to take a position, and this may not be quite as well expressed as it should be as I have it here, but the position we

were prepared to recommend taking is: first, that the Supreme Court of Canada as at present constituted should be continued as the final tribunal for all constitutional decisions. The Supreme Court itself must have the last word on what is a constitutional issue for the purpose of this final jurisdiction.

Then subject to this, we say that there would be no objection to final determination by the provincial court of Quebec of private law matters of the Civil Code of Lower Canada arising in Quebec.

Now, this is a big and fundamental issue too, Mr. Chairman. I do not know whether you want me to do anything in a definitive way at this stage.

THE CHAIRMAN: My only concern about treating this definitively here, is that categorically Professor Meisel is one who expressed a strong opinion on this subject.

PROF. CREIGHTON: A strong opinion to have it delayed.

DEAN LEDERMAN: Yes, he wanted to have a month to think about it. Now he has had to leave before he has got to it this time.

PROF. McWHINNEY: Did he have an opinion on the substantive issue or simply that he ought to have an opportunity ---

DEAN LEDERMAN: He wanted to think about it.

DR. FORSEY: Has anybody any idea?

DEAN LEDERMAN: I have not talked to him

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since I do not know what it is he thinks at this point.

PROF. McWHINNEY: One never sees one's colleagues.

THE CHAIRMAN: This is a touchy one.

PROF. CREIGHTON: The constitutional committee would all vote "aye" I think.

PROF. McWHINNEY: This is representative, I may say, not a compromise, but an agreement among people who had a wide range of opinions.

I think it is a very reasonable formula. I do not think Professor Meisel would have doubts any more off beat than were represented amongst the committees. It would surprise me.

DEAN LEDERMAN: I think the sub-committee is satisfied to take this position. That does not mean that we are carrying a torch for having it disposed of in the full Committee today; but as far as we are concerned, having discussed this issue through in a couple of meetings now, I think we have, more than anything else we have considered, reached this as the position on which we are prepared to hang our hats.

THE CHAIRMAN: Can I make a suggestion? I am anxious about the appearance of delaying and deferring a conclusion. I did make the point that I think it is more effective to transmit a series of recommendations on a number of issues in one

package to the P.M. We are aiming in January at having an extensive meeting, from which a number of other recommendations, we hope, would arise.

I would think, although this need not be discussed further in your committee, that it might be held as one recommendation to be dealt with as a series, and put forward in that way, and then will serve the full advantage of opening it to ^a perhaps/fuller forum than we have at the moment.

DEAN LEDERMAN: This would be my point, Mr. Chairman. As far as the constitutional sub-committee is concerned, we are satisfied with this and we do not intend to reconsider it.

THE CHAIRMAN: The matter is tabled and we will use our judgment about the occasion for the Premier. Is that agreed?

DR. FORSEY: May I suggest -- the main Committee has not pronounced on this?

THE CHAIRMAN: No.

DR. FORSEY: I suggest that we try to allow time fairly soon for the main committee to take a stand on this, even if the stand does not go forward immediately to the Premier. I do not think it should be left hanging like Mohammed's coffin between earth and heaven for an indefinite length of time.

DEAN LEDERMAN: We might get time .perhaps to start with a short plenary session next month.

THE CHAIRMAN: I am beginning to think we might take some time at the next meeting to tidy up one or two of these matters that are in the air.

PROF. McWHINNEY: It would be helpful to know what we agreed on, to have, in other words, a few short pages flowing from ---

PROF. CREIGHTON: Two things in constitutional committee are the international agreements and Supreme Court. These, I think, we can decide, I suppose.

THE CHAIRMAN: I think so.

DEAN LEDERMAN: These are closer to specific recommendations than anything else that is before us.

DR. FORSEY: One reason that occurs to me. The Premier might want to know something about these beforehand. He might want to know what we base this recommendation on. Is he likely to come back and say: "That is your opinion. How do I back it up? How did you arrive at these conclusions?".

DEAN LEDERMAN: Yes, we have got to be prepared to spell that out.

PROF. McWHINNEY: He has a position paper, though, in fact, representing that would be helpful.

PROF. CREIGHTON: This is not a position paper on that argument respecting the Supreme Court and the Province of Quebec.

PROF. McWHINNEY: It was probably canvassed before. I did not take a position on it, but

I think I indicated the alternatives in other courts.

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THE CHAIRMAN: This is not obviously the time to read all of this paper in length. We had to assemble a series of points in it.

DEAN LEDERMAN: This is the form in which these things are transmitted to him.

THE CHAIRMAN: Yes.

DR. FORSEY: I think it was just possible he might want the Quebec Courts call a "decision motivee", he may want in this paragraph, saying the reason for his recommending paragraph (a) is such and such, and two or three short clear sentences, followed by the reason for recommendation (2) and again two or three short sentences; reason for recommendation (3) and again two or three short sentences.

I wondered if we ought not perhaps to keep in the back of our minds the institution for provision for something of this sort, if he said: "I want to have something on which I can hang a short speech in a Dominion-Provincial Conference, if this comes up."

PROF. FOX: May I suggest, to draw this to a conclusion, that if we put this on an agenda in sending out the usual letter that goes for the next meeting, as I understand you have for a plenary session, and we take an hour on the 17th of December.

THE CHAIRMAN: Fine.

PROF. FOX: Or whatever we feel is required to discuss this, and we try to come to a decision on it, even though it may not be reported to the Premier until later.

THE CHAIRMAN: All right.

PROF. FOX: At least it will be one point accomplished.

THE CHAIRMAN: And from that we get some recognition of the points that should be re-assembled to back up the recommendation.

I am beginning to think, as Mr. Diefenbaker must have felt in 1963, that I hate seeing people disappear out that door.

DR. FORSEY: But none of us, I think, have any stilettos.

THE CHAIRMAN: We have the cultural committee to do, and I gather they have a lot of material.

PROF. FOX: Don't we have economic business to do too.

THE CHAIRMAN: We have no report. We are a very obliging sub-committee.

PROF. CREIGHTON: Are we prepared to go ahead with all this over again?

THE CHAIRMAN: I really wanted to hear what the cultural people had to say, if there are any issues that we should table in the same manner for the next meeting, as I do not know we can do much

now.

--- Short recess

THE CHAIRMAN: I am understandably always torn here between cracking a chairman's quip and recognizing that we cannot do all the amount of business we have to without some lengthy discussion, and we have a lot of business.

Economic and Fiscal committee still has a lot of work in progress which is under way in the Department. We are dealing with some rather complicated questions.

We had a general discussion this morning in the presence of members of our staff here, from which various suggestions were put forward for refining that work, for developing it, and this again is a matter of long-run work and we are not advancing any recommendations at this time.

Now, the cultural committee, I understand, covered a great deal of ground.

FR. MATTE: Mr. Chairman, in our meeting this morning we have dealt with three things. We studied the memo presented to the members, and we came up with three recommendations.

Second point, we considered results of the inquiry about use of French in the provincial administration.

Third point, we were dealing with the inquiry about the need or the possibility of translation in

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the Province of Ontario.

In my memorandum I divided the paper in three parts. I was asked to study and bring some observations or suggestions on further exchange programmes between Quebec and Ontario, or between the French and English population of Ontario.

My paper deals with four parts. The first part: what we have already in Ontario as far as bilingualism or the use of French, or the relationships between both communities, French and English.

If we do some reflection we realize, and you will see in the paper, that there are a lot of contacts, a lot of exchanges between the two major groups of Ontario.

First of all, the two bilingual universities in Ottawa and Sudbury, and we know, for instance, there is a good lot of French-speaking people in the elementary schools and the high schools. As well we know that each year a good number of high school students go to Quebec for a few weeks, and in the same way Quebec students come to Ontario, for the purpose of learning a second language.

You also find French people on the executives of labour unions; you find some of them as sales representatives for large corporations. You will very often also meet an English gentleman who speaks fluent French, like the Chairman of the Board of Dupont of Canada and another gentleman in

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the Shell Company who speaks French fluently. So these people have quite easy contacts or exchanges with other people of French origin.

You know, for instance, that here and there you have students or local men and girls having a kind of summer camp where they spend a few weeks together, have music and all sorts of things, and then exchange ideas and have contacts between the two major groups of Canada.

In the second part I was asking myself: is there any way, or will it be good to try and increase the effectiveness of these contacts? So to arrive at such a result, I imagined that maybe in a province like Ontario there could be what I would call an "office of promotion" or bureau somewhere, the ultimate purpose of which could be to initiate similar programmes with other groups not already involved, or to assist financially with such programmes; also to take initiative to create and to promote additional non-cultural exchanges or programmes between French and English speaking in Ontario or between Quebec and Ontario.

In the third part we consider other areas where exchanges like that could be developed. You have, for instance, both in Ontario and Quebec, trade missions going abroad to offer the products of the provinces. Why not, for instance, have joint trade missions going abroad and with fair play offer

the products of both provinces together?

In the same way there could be some kind of research institute jointly supported by Quebec and Ontario in the development of programmes like Hydro, natural resources, mining and so forth -- joint programmes that could be developed between both provinces.

There could be intensive participation of Quebec in the C.N.E. here, or Ontario could also appear at the provincial exhibition of Quebec; anyhow to try to develop and to promote as much exchange as possible between various associations, French and English in the same field of industry.

In the same way, why not have some mutual exchanges or seminars between the Civil Service of Ontario and Quebec; exchange professors at university level or high school level.

Why not have permanent travelling exhibitions of both governments? Why not have seminars and study groups of both cultures at all levels like municipally, radio, TV., Technical schools, all sorts of things like that.

Why not try to promote the sale of Ontario products by putting a French name on the jam can or anything like that?

In the same way, for instance, International Nickel is offering hundreds of summer jobs to students. Maybe a good number of Ontario students

could go to a Quebec firm, and Quebec students could be attracted to go and work in Sudbury within the mines.

You have in Europe the kind of association of people in parliaments. There could be maybe the possibility of having an exchange of M.P.'s from Ontario and Quebec. Then as far as publicity is concerned, why not produce leaflets to show Ontario people what Quebec is and the same to show Quebec what Ontario is?

I think it is at university level that we should mainly start with a kind of greater role, and that should be observed in the field of bilingualism. We know, for instance, that in the British Columbia university you have a very good and strong department of French and the best, I was going to say, library of French literature. In Waterloo they now have a French House -- things like that. At McGill they have a kind of Institute of French Literature; and in the same way, for instance, we know that the Sir George William University, Montreal, is offering 30 per cent of their lessons this year in the French language.

So there is a lot of room for developing more and more of these exchanges and contacts between Quebec and Ontario or between the French and English population of Ontario.

I conclude this short paper by saying that maybe there should be a kind of institute of research, because we have noticed (and it was the opinion of the members of the committee) that in every case here and there we saw the sociological aspect in every angle of this problem.

Or maybe a kind of research institute or social research institute could be organized in the one or two bilingual universities in Ontario -- an institute that could study, for instance, the effects of bilingualism on the intellectual capabilities of the individuals; an institute to study reactions where a majority and minority are in existence; to study the results of bilingualism or multi-lingualism in other countries like Switzerland or a good number of European countries.

The institute should prepare reports on the national and social background of French speaking and English speaking people in Ontario; an institute to study the organization of the French society here in Ontario and the English society; the same group to study the role of the French speaking people in Ontario politics.

These are a few points (I am going through them very fast) which I mention in this paper.

Then our committee came up with three recommendations. First of all, that this Advisory Committee may be kind enough to try to find someone

and appoint someone to complete this kind of inventory. It would be good to have more statistics, to know names of associations, French or English, in Ontario, so as to see later on how these exchanges could be better organized.

The second point, we realize that maybe it is time now for our sub-committee on bilingualism and so forth, as we were saying before, to stop skating around and come to the point where we would try to propose a kind of position paper: "Should Ontario be an English province or should Ontario be a bilingual province?" or: "Should Ontario recognize the fact of the French record in Ontario that they have?"

Then we would meet once or twice and would try to present you by Christmas time, let us say, or at the latest in January, a kind of position paper as our sub-committee thinks of that, and this would be presented for your consideration.

It was underlineDalso that the points I was mentioning here for the various studies that this research institute could undertake, that maybe these points are already studied in some instances by the B and B Commission. So it was proposed that we wait for a while to see what the conclusions of the Band B Commission are on those specific subjects and, if necessary, we could come up again with this idea of the social research institute in Ontario.

We dealt with the results of the inquiry about the use of the French language in the provincial administration of Ontario. As far as we can see, not much French is used, almost none in Toronto as far as we can see.

Our committee recommended that Mr. Seguin try to find in the district of Ottawa some statistics on the use of French there at various levels. In the same way we asked Mr. Stevenson and Mr. Russell to study such problem in districts like Cornwall where a good part of the population is French speaking, or elsewhere in Ontario; and they recommended to ask Mr. Stevenson and Mr. Russell to approach may be the people of the Civil Service Commission here, to find out from them, if possible, how much use of French is made here in the provincial administration, mainly in Toronto.

The third point in our studies this morning was the possibility or the need for having a school of translators and so forth in Ontario. We recommended, and Professor Symons has accepted the task, to inquire from the Ryerson Institute, and he will report to us. So later on we should be in a position to report as a sub-committee to the Advisory Committee.

That is the report, Mr. Chairman, of our sub-committee.

THE CHAIRMAN: Thank you very much. You

have had a busy day. I am not sure, looking over this, if there are decisions that may emanate from this.

PROF. FOX: I think there are several. One of them is the first point that Father Matte made, that his study was meant to be a preliminary survey, and that we really need somebody not on too high a level but, say, a young faculty member or someone of that sort, who is capable of picking out facts, to discover for us just exactly what the situation is in reference to exchanges and the existence of bilingual organizations within Ontario and so on. This is not contemplated to be a massive study or just an accumulation of a lot of arid statistics, but an attempt to find out really to what extent Ontario is really bilingual, and to what extent French is used in individual communities and is used by both groups, that is, within an association such as the Alliance Francaise or something of that sort.

THE CHAIRMAN: I think it is absolutely essential, if the government is going to move far in new fields, that we would be in a position to back this up with facts about what exists.

PROF. FOX: We all felt, I think, in the sub-committee (I believe I am correct, am I not?) that we needed to have the facts, and Father Matte could not be expected to take his valuable time to

dig out this sort of thing, but that again here was a point where we might find someone. Indeed the committee suggested that Father Matte might be able to find someone on his staff to do this, to do maybe three weeks concentrated work or something like that, and probably work under Father Matte's or somebody else's direction and do this job and be paid a fixed sum for it.

THE CHAIRMAN: I take it there is no dissent to this suggestion?

FR. MATTE: Then I would try to find someone and I will report to you within four or five or six days.

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THE CHAIRMAN: Fine, thank you. Paul, were there other things you felt required decision?

PROF. FOX: I imagine you would approve of Tom getting in touch with Ryerson to find out about the translation.

PROF. SYMONS: A telephone call, Mr. Chairman.

THE CHAIRMAN: In French or English?

PROF. SYMONS: Bilingual, of course. On the translation question we did feel that the sub-committee and plenary committee had so much business that this was something that was not of top priority; that the only immediate action was to check whether or not Ryerson or any other similar institution might have something in mind that we would need to know about. If not, we felt

we might defer the study of the translator training opportunities until probably in the spring.

THE CHAIRMAN: Tom, you wrote to Professor Brady, I think, and you sent him a copy of the letter.

PROF. SYMONS: Yes, Mr. Chairman. This was on this point. At the last meeting of the sub-committee a month ago it had been suggested that I find out if there would be any member of the staff of a French university that might do this; and I think such a person can be found but in today's discussion we felt that this was something that might wait until the spring.

THE CHAIRMAN: Fine. I had forgotten the point and I wanted to tie that together.

PROF. CONWAY: Paul, was that report on the use of French in the Ontario Government circulated generally or just to our committee?

PROF. FOX: I wonder, was it?

PROF. CREIGHTON: It was circulated generally.

PROF. FOX: We felt that through no fault of the person who made the report, which was Mr. Russell, this ought to be extended, because in effect he only talked to some people who were in Toronto, and indeed had not talked to one of the key groups which had not been available -- the people in the Civil Service Commission. So we suggested in Mr. Stevenson's presence, and I think Mr. Russell had joined us then --

MR. STEVENSON: Yes.

PROF. FOX: That with your okay, Stevenson and Russell would not take a lot of time but Russell, for instance might take one day and go down to Cornwall and talk to a few people, and maybe one day in Timmins, to find out from the lower echelon, and not people engaged on top, what the feelings would be.

FR. MATTE: But this was to some extent dealt with in the Russell report, all the people that he questioned, coupled with a fair degree of local usage of the other language.

PROF. FOX: He talked to the people in the top.

FR. MATTE: Yes.

PROF. FOX: And we got the feeling from the replies -- it was the usual sort of thing of the people on top saying: "We have not had any trouble" and if you want to find out what the situation is you ought to also take some of the people who are on the spot.

PROF. CREIGHTON: But he did imply there was a good deal of local usage of the two languages.

PROF. FOX: Yes, we are not suggesting any exhaustive survey; merely trying to find out what does this mean in the actual case of the people -- I mean, the people on the top are quite happy about it all, but there was some interesting stuff

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came forward on the Ontario Provincial Police Force, for instance, where they have made an effort to recruit additional French-speaking people and have had great difficulty. But this is really by the way, but that is the sort of thing we want to find out further information on.

PROF. SYMONS: We thought, Mr. Chairman, it would be useful to pick two or three areas or communities in the province, and just make a check in depth of what the feeling was in relation to French and English speaking people.

THE CHAIRMAN: I think this is desirable. I should say a number of these staff studies which we have been bringing forward have been partial, and deliberately so. We felt the only way we could develop the matter is to do some work, bring it forward, if it is not right here, and it is then a job of the Committee to advance it or kill it or whatever you think.

PROF. FOX: Incidentally, the sub-committee was not passing any judgment.

THE CHAIRMAN: No, no.

PROF. FOX: We are quite happy with his report.

THE CHAIRMAN: I was not suggesting that at all, but really to see if this is a suitable procedure, as I think probably it is.

Are there other matters hanging in the air?

Then, to sum up, we meet on December 17th, essentially in sub-committee. In writing to members I had better make note of this. We indicate a partial period will be set aside for consideration of the Supreme Court resolution and the treaty arrangements. That is all, I think. Is there any other business? I guess we have all had it.

--- The meeting concluded at 4.50 p.m.

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Government
Publications

ONTARIO ADVISORY COMMITTEE ON CONFEDERATION

M E E T I N G

held at

950 Yonge Street,
Toronto

on

FRIDAY, DECEMBER 17, 1965

VERBATIM REPORT OF PROCEEDINGS



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VERBATIM REPORT OF PROCEEDINGS

ONTARIO ADVISORY COMMITTEE ON CONFEDERATION

-----Meeting held at 950 Yonge Street, Toronto,
on FRIDAY, DECEMBER 17, 1965.

PRESENT:

Prof. Macdonald (In the Chair)

Prof. Brady

Prof. Conway

Prof. Creighton

Dean Dillon

Dr. Forsey

Prof. Fox

Mr. Gathercole

Dean Lederman

Mr. Magone

The Rev. Dr. Matte

Prof. McIvor

Prof. McWhinney

Mr. Perry

Prof. Symons

Mr. Stevenson)

Mr. Farrell) Co-Secretaries

VERBATIM REPORT OF PROCEEDINGS

The first of these is the
 fact that the system is
 not self-sufficient in
 the sense that it does not
 produce its own energy.
 It is a passive system
 which must be supplied
 with energy from an
 external source. This
 is a serious disadvantage
 in many applications.
 The second is the fact
 that the system is not
 very accurate. It is
 subject to many errors
 which can be avoided by
 using a more sophisticated
 system. The third is the
 fact that the system is
 not very reliable. It is
 subject to many failures
 which can be avoided by
 using a more sophisticated
 system.

--- at 9.40 a.m.

THE CHAIRMAN: I think we might begin, gentlemen. Dean Dillon will be slightly detained. He is coming by rail this morning. John Conway is coming from what is almost as distant a part up at Steele's and Keele, and he is having some difficulty getting a taxi and will be a little late; but transportation from a southern direction seems to be rather easier and we are pleased to welcome Professor Brady back, straight in from the West Indies.

PROF. BRADY: Like other distinguished people.

THE CHAIRMAN: Professor Brady in his most recent letter, which arrived half an hour before he did this morning, was describing some of the difficulties of getting all of the work done he would have hoped to have gotten done in the West Indies. He did not elaborate on that, so I leave that to him.

If I might make some brief preliminary remarks, first of all on the form of the day, I would propose that we try to conclude this plenary session, which was intended to be a brief session, by 10.30 this morning, if possible, at which time coffee will arrive, and then we might go directly to sub-committees for the balance of the day. As suggested, the sub-committees should meet as briefly or for whatever length they feel

necessary to complete their work for the day.

I have arranged lunch downstairs for quarter to one, and I am hoping that our Committee may have concluded its day's work by the end of the morning.

Mr. Stevenson will have to leave from the Cultural Committee for the afternoon but we will have one other dutiful member of the staff who is going to attend to take notes for the afternoon.

PROF. CREIGHTON: You really want us to conclude by one o'clock then.

THE CHAIRMAN: No, I am not suggesting that at all, except for my own sub-committee; but I know that the cultural committee expected a full day and, as Profesoor Fox will report in his report from the research policy sub-committee, I have arranged a meeting at 2.00 p.m. for the constitutional sub-committee with Mr. Dick, the Deputy Attorney General. So that I am presuming that the cultural committee and the constitutional committee will go on probably well on in the day, and by all means if our economic and fiscal committee requires further time they could carry on as well.

Now, the second thing I wish to report upon is a conversation with the Prime Minister about the work of the committee, and there are three points in particular which he raised.

First of all, he asked me again to assure the Committee here that he is proceeding with the

cultural agreement and it will be announced at an early and auspicious date; that he has had discussions with Keiler McKay and Milton Carmon of the Ontario Arts Council and that procedures are well under way for the implementation of such a programme under their means. In that connection he asked me again to express his appreciation of this first official recommendation from the Committee.

PROF. McWHINNEY: This is the France-Ontario cultural agreement?

PROF. IOX: Quebec-Ontario.

THE CHAIRMAN: The Quebec arrangement.

PROF. McWHINNEY: Oh, Quebec and Ontario. There is another provincial agreement planned with France.

THE CHAIRMAN: No, I am sorry. This is Ontario-Quebec.

PROF. McWHINNEY: Under the Dominion umbrella.

THE CHAIRMAN: The second thing we discussed is something I would like to draw to the attention in particular of the constitutional sub-committee. He suggested that in his opinion the notion of an associate status or the associate state concept for the province of Quebec, was representative of an attitude that seemed to be hardening in Quebec. He sensed that in the near

future we were going to have to contend rather directly with the point of view being advanced by Quebec, and he felt that his government must be prepared to face that question. I must say that this is my own impression, that this point of view is becoming a significant point of view.

I might say, parenthetically, that two or three weeks ago I attended a meeting at the Seignior Club, the McGill Conference, which this year was on the theme of Federalism, at which there were a number of top drawer representatives from the province of Quebec, among others. I think there was a very strong feeling came out of that meeting that this was a serious and imminent point of view.

Therefore it seems that we should be considering the meaning of this proposition and the various implications of it, and I hope to be in a position to provide the Prime Minister with some analysis of this situation and its implications, so that he might in the course of the winter prepare himself to contend with it.

I think this is something we might refer to the constitutional sub-committee as part of their day's work, both to treat the subject within their present knowledge and to suggest how we might proceed to prepare ourselves on that question.

The third matter he discussed with me was his own wish to associate himself at some early

date with the Committee in a discussion session. We had discussed this here before, and felt that we should be in a position to have some particular points to take up with him and to focus upon; but he felt that there were a number of things in the air that we should discuss, and suggested that we have another dinner meeting next month. I propose to try to arrange this to suit our regular meeting on the third Friday of January, and to invite the Prime Minister to have dinner with us and spend the evening in discussion; and, before that time, to have a meeting with the research policy sub-committee to try and bring some issues out that we should be prepared to discuss with him, as well as those matters he might want to discuss with us.

I got the feeling that he was not thinking of this as a highly formal sort of situation, but a dinner meeting where we might afterwards put our feet up and chew over some of these questions.

I think that might suit the next suggestion I was going to make for our future schedule, and that is that our two-day seminar session that we had discussed, might perhaps be better held in February, for two or three reasons. The first is that Professor Fox and I are both involved in another conference on the Saturday morning. That is my only commitment, Paul. Are you tied up on the Friday night as well?

PROF. FOX: I am supposed to be.

THE CHAIRMAN: But more importantly, I believe Professor Brady would feel better prepared to deal with his assignment at the February meeting. Particularly if we are going to meet with Mr. Robarts in January, we might form our own seminar session for February. I wonder, are there any points we want to discuss in that connection?

PROF. FOX: There is this one obvious point, I think on that, Mr. Chairman, which is that surely we would be better prepared to talk as a group with the Prime Minister after a two-day session than before. I have the apprehension that if we meet as a group with the Prime Minister without having discussed some of these basic problems and threshed them out among ourselves, that we might get into a discussion with one another and not be as much use to the Prime Minister as we might be if we discussed it in advance amongst ourselves and sorted out these things.

PROF. SYMONS: Mr. Chairman, has he given you any indication, or would he prior to our evening with him, of particular things that he might hope we would talk about in our informal discussion?

THE CHAIRMAN: No, this arose yesterday afternoon when we were talking principally about the first two points, so we did not really have

an opportunity to discuss the strategy or the method of such a meeting.

PROF. SYMONS: I ask the question because there are perhaps a number of things we would be able to discuss with him usefully, but if it is a more broad and ranging and informal discussion that he wants, I think Professor Fcx's point is very valid.

THE CHAIRMAN: I think I see the distinction here now because he did say that he felt that the Committee might welcome a bit more direction from him in terms of matters that were on his mind. Therefore I think this particular meeting was to be less a matter of resolving issues as against raising issues; by having a discussion among ourselves, to help develop some of the things that appeared to be in his mind, and perhaps in ours, imminent, and would help us to chart our course.

I do think, however, that, by the same token, we have a great many questions here which we have discussed and alluded to and decided that we might proceed upon them oneway or another, and there are a great many of these things which are floating about, and a meeting with him might help us sort out some of our own priorities. However, I do agree that if we are talking about a high policy session, we want to be well prepared before we do that.

PROF. McWHINNEY: If he wants recommendations from us, then it may be better to wait, but I think we also want some leads from the Premier because it does shape the scope of research and policy conclusions we would make.

PROF. BRADY: In other words, this is as much a discussion of agenda, as it were, of this Committee.

PROF. McWHINNEY: The priorities in agenda.

MR. PERRY: I think if we pick the more formal and auspicious things, this is simply a channel to receive recommendations from this Committee.

THE CHAIRMAN: This is intended to be highly informal, to help us know each other's minds a little better as to where we are going.

PROF. McWHINNEY: Would it be possible, if not over-taxing the work, to have two meetings -- the one you suggested in January and another one later?

THE CHAIRMAN: Yes. What I would like to have is this one as a dinner meeting in January, and then later in the winter the seminar session which we discussed, when we would have not only the Prime Minister but two or three other members of the Cabinet who are concerned with these affairs -- the Minister of Education, Attorney General and so on.

PROF. CREIGHTON: The purpose of the meeting is not for us to make recommendations, but for him to make suggestions, isn't that in fact it?

THE CHAIRMAN: I think that is it at this juncture.

PROF. MEISEL: I think perhaps there might be some merit in his sitting in with us as we are discussing some problems, because in this way he will see something about the sort of complexion of this Committee. If he gets a report from us, it looks as if we all approached everything from the same point of view, which we obviously do not.

THE CHAIRMAN: I think we might betray ourselves.

PROF. MEISEL: We will watch for signals from you, Mr. Chairman.

PROF. CREIGHTON: I think that we ought to let him talk and go away ---

PROF. FOX: And think he has been very well informed.

THE CHAIRMAN: I have done my best from time to time to describe something of the nature of our activities.

PROF. MEISEL: It is impossible.

MR. PERRY: I suppose he is aware there are differences of views on some things?

THE CHAIRMAN: Yes.

MR. GATHERCOLE: Mr. Chairman, you mentioned

earlier that he had intimated and you had sensed yourself perhaps some firming up in the opinion of the associate state conception for the Province of Quebec.

Of course if one considers that the pendulum has not swung to its full extreme yet, that would certainly be in the direction which probably thinking would go -- at least some greater measure of independence and desire to operate their show entirely themselves; and if one believes that this is so -- and I feel myself that their whole set up could emerge from it -- that one ought to visualize if it comes about, and it is well that you have projected your thinking ahead to contemplate what would be the order of arrangements under such a conception in matters on the fiscal side and on the monetary side, and there are a whole host of things that one might explore in a sort of general-free-wheeling discussion without ever getting down to something of a definite or concrete nature at this time.

I would think that such a meeting with Mr. Robarts might give rise to some of these questions, but at the same time I feel that perhaps a list of some of the subjects might be done at some time where there would be some preliminary discussion.

I am quite sure that the Premier recognizes

the diversity of views and opinions of the members of this Committee, but nevertheless I do feel that it might make for a little more orderly discussion if you prepared some sort of list of topics.

THE CHAIRMAN: I might say, George, in that connection, that we are now getting ourselves set up a little better in terms of our staff arrangements here. We are both recruiting and re-allocating some of our staff to those functions where Mr. Stevenson and Mr. Farrell and I will have a little more assistance in carrying out the work of the Committee between meetings.

I would think that we should prepare ourselves fairly well for that January meeting, and that the research policy sub-committee should go over the approach to the meeting. I do not think we want to approach it in the sense of having everything cut and dried, but I think we should have some sense of where we want to steer the thing to the best effect.

Are there any other matters on facing that situation?

MR. PERRY: I just wanted to go to the financial area and ask you if there is anything further, beyond what we have seen in the newspapers, that you could give us on some of the recent discussions in Ottawa. I am not seeking confidential information.

THE CHAIRMAN: No. Yes, I would like to speak to that for a minute or two, because I think this is rather like the associate state proposition that we have just been discussing, in one area; that some of the financial and economic positions that are developing are also immediate and of concern.

There were two meetings in Ottawa last week.

MR. STEVENSON: Four.

THE CHAIRMAN: Well, one concerned with poverty and the other concerned with affluence. The Poverty and Opportunity conference went on from Tuesday to Friday, at which 175 officials from different provincial jurisdictions and from the federal government attended. Ontario was represented by some 32 civil servants from seven different departments. Mr. Stevenson was at that meeting throughout. I attended the first two days and then left the company of the poor to meet with the Minister of Finance and the Provincial Treasurers on the Thursday and Friday.

On the Thursday there was a meeting discussing general economic conditions and problems of co-ordination of financial and budgetary policy; then on the Friday a meeting of the Tax Structure Committee, which received the first report of the Tax Structure Committee, which is a projection of revenue and expenditure requirements for all levels

of government down to the end of 1971-1972 and would be the basis next year of the new fiscal arrangements for the period 1967-1972.

At all of these meetings I think clearly we were faced with some of the problems that our economic and fiscal sub-committee has been contending with: that is, how do you reconcile the number of perhaps conflicting interests, at least different policies, that bear on all of these matters?

For example, the war on poverty itself is a war declared by the Federal government, but the battleground is largely within the provinces, and within provincial spheres there is obviously a great deal of work to be done, not only in describing what the objectives are but in co-ordinating policy in the attack.

I felt that the meeting of the Minister of Finance with the Treasurers on this was a very good meeting and a very promising one. I was not present at the first of these meetings, which took place a year ago, but everything that I was told by those who had attended both meetings indicated that they felt the meeting this year was very much more productive, and that people were very much more forthcoming and willing to talk about the means of collaboration.

I must say I think this is in large part due to the skill and understanding of Mr. Sharp,

who presided over the meetings in what I thought was exemplary fashion for those two days, and he certainly received the good wishes and the general support of all of the provinces present, quite apart from political complexion.

3 The point that comes out of this is that the committee of officials known as the Continuing Committee on Economic and Fiscal Matters, was authorized by the Tax Structure Committee, which is a committee of Ministers, to engage in shadow-boxing during the next three months, and to discuss policy alternatives and policy positions that might then be put on the bargaining table, so to speak, in the late spring and early summer, leading to the next round of fiscal arrangements. It was hoped that we would come out with fairly strong and well-researched positions on this, because already, as I understand it, this next round of federal-provincial financial arrangements will begin with much better equipment than any such negotiations have ever had before.

 In the first place, the work of the Tax Structure Committee does set out, as well as economic forecasts or projections can set out, exactly the magnitude and the order of the problems that we are facing. Then our fellow Royal Commissioners here from the Carter Commission and the Smith Commission in Ontario will report

very early, of course, and will do their work too.

MR. PERRY: I think the Quebec Commission is going to beat either one of them from what I hear.

THE CHAIRMAN: Mr. Lesage said they were reporting on 22nd December. In any event, we will be well equipped with formal studies. What this means is, I think, we in the government will be very well served by the advice of this Committee, and our economic and fiscal committee should try to start work on some of these positions from the point of view of Ontario.

When we go into our sub-committee this morning, I am going to make available to the sub-committee for their purposes this morning, first of all, an extended paper on Ontario's present policy in these areas; secondly, on a confidential basis, the paper which the Government of Ontario put before the Treasurers last week, which is not a thing that in any way outlines new policy or anything of that nature, but did try to put together in a concrete fashion what the policy position is now and where we think it is leading.

So that, to come back to your question, Harvey, I think we can do some very hard work for the next few months that will be of direct assistance to those of us who are working on the background for this bargaining.

Might we jump to item 3, while we are in this

discussion of procedural matters, and I would ask Professor Fox to report for the research policy sub-committee and then we can get to the Supreme Court.

PROF. FOX: This is a very brief report from the policy research committee meeting of December 3rd. In attendance were Messrs. Macdonald, Creighton, McIvor and Fox, and Mr. Stevenson and Mr. Farrell were also present.

The first item -- it was agreed that the Chairman should arrange a meeting with officials of the Ontario Civil Service Commission and members of the staff of the Advisory Committee, to discuss overall government practises and policies in the use of French and in recruiting. This, you will recall, arose from our previous discussions. It was suggested that the proposed visit of Mr. Russell to regional centres in eastern and north-eastern Ontario be discussed with the Civil Service Commission personnel, before trips were undertaken. This was a subsequent thought that we had had after a discussion he had at our last meeting.

PROF. BRADY: May I ask what was this visit?

PROF. FOX: You were not here last time, Dr. Brady, but it arose out of the paper that Mr. Russell had prepared on the use of French in the administration of the government of Ontario, and Mr. Russell's survey was developed only from

contacts with people who were at the top level in the government departments. It was felt that there ought to be a check perhaps at the very base level to find out whether the people at the bottom level were as happy as the people at the top. However, in the policy research committee it was felt that courtesy and protocol probably dictated that Ian and others should consult with the Civil Service Commission, to make sure that they did not feel that we were investigating or probing or anything of that sort.

The second item concerns an administrative matter, and that is the matter of contracts for research carried out for the use of the Committee. Here it was suggested that the Chairman of our Advisory Committee should talk to Professor Michael Oliver and Professor Douglas Hartle, who are research secretaries respectively of the B and B Commission and the Federal Commission on Taxing, on the practises followed by those Commissions in making arrangements for contracted research.

The idea here is that we might get some valuable pointers as to how to enter into contracts and what problems to watch for.

After the Chairman obtained general ideas on the relevant payment rates and forms of contract from the sources, actual terms of reference for individual studies would be worked

out among the Chairman, the member of the policy research sub-committee in the area of interest of the study, and the person undertaking the research.

It was suggested that this could be done in respect of the studies which have been recommended at the last meeting for Professors Creighton, Watt and Rowat.

Thirdly, re the work of the constitutional sub-committee on December 17th, as Ian has already mentioned, it was suggested that the Chairman ask the Deputy Attorney General if he would like to meet with members of the constitutional sub-committee in the latter's office on December 17th. Mr. Dick is expecting the members of this sub-committee in his office at 2.00 p.m. today, December 17th, and it is suggested that the members of this sub-committee might prepare this morning to discuss the question of treaty-making and the arrangements on international agreements.

Item 4 is in reference to Father Matte's study about exchanges between French and English Canada. It was felt that it was desirable to extend this study, and I see that we have a report from Father Matte now adding to that. The members hoped that this sort of extension might be made by Father Matte, and that there would be further details about the actual facts involved. I see we have some of those here, and we thank you for

them. Perhaps we can consider that in our sub-committee and then go on to see if we want to extend it further.

Item 5 -- policy inventory. It was emphasized that any paper attempting to summarize the Ontario Government's policy positions should be put into the context of changing attitudes over the years and, in any case, should not be permitted to constrain the Advisory Committee in its work and recommendations.

You will recall (you were not here, Professor Brady) that we had a report last day merely pointing out that this was a selection of statements of previous policy positions and was not necessarily intended to direct this plenary Committee in its work or recommendations.

Item 6 is Economic Sub-Committee. It was suggested that a paper given by Professor Stefan Dupre to the 1964 meeting of the Canadian Tax Foundation should be circulated. I see we have that before us.

Item 7 - future meetings. It was suggested that sufficient material might not be ready in time for a two-day meeting in January, but it was decided to review this situation after the December 17th meeting. Mr. Macdonald is going to speak to that item. Perhaps we can discuss it in considering this report. This completes the

report, Mr. Chairman.

THE CHAIRMAN: Thank you. Are there questions or discussion arising from the report?

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MR. STEVENSON: I thought I might just say what did come round this morning, although you have all seen it by now.

In addition to the material that went out by mail last week, this morning we left with you, as Professor Fox has said, a copy of the paper by Professor Dupre of U of T on contracting-out; an excerpt from this month's "Canadian Forum" about Professor Smiley of U.B.C., where he talked about Ontario's position in the whole matter of federation, as exemplified by Mr. Robarts' statements this fall.

Thirdly -- and this is basically for the constitutional committee -- a very short note in which Terry Russell describes another of his interviews on the international agreement situation.

Then there are several briefs which we culled from the various briefs presented to the B and B hearings in Toronto last week. We had original copies of all the briefs that were presented but we thought the four here were perhaps the more appropriate.

There is one by the Students' Law Society, Faculty of Law, University of Toronto; one by the Educational Reference Book Publishers Association;

a third by Professor Keirstead; a fourth by the Toronto French School.

In addition, I might just add that we have now received the paper which had been done this summer under the supervision of Professor Meisel, by Elizabeth Way, analyzing the various briefs presented to the B and B Commission in Ontario and Quebec, and cataloguing them. We have not had a chance yet to have it reproduced. It is rather a large paper, and we will try to have it sent out between meetings.

THE CHAIRMAN: Christmas reading that will be.

MR. STEVENSON: It is 55 pages.

PROF. MEISEL: Soporific.

MR. STEVENSON: Dr. Forsey also gave us this morning his copy of the paper which he has done on the Monarchy in the provinces, which I believe he has distributed to the constitutional sub-committee, but we are trying to make arrangements to have copies run off this morning which could be distributed before you leave. It is going to be touch and go on the printing, and I am not sure whether we will make it, but we will try to.

Thirdly, of course, we have the addenda to Appendix A of President Matte's paper which was presented before the last meeting, and which has been distributed this morning, for discussion by the cultural sub-committee.

One other thing I might mention, Ian, just reverting back to your conversation of last week: at the final session of the Poverty and Opportunity Conference the morning was devoted to methods of co-ordination for the war on poverty and the kind of organizational structure which will be needed both at the individual government levels and between governments.

The general feeling, I think, at the end was that the one thing that was lacking about the conference was that it had plenty of social workers and a few economists and a number of cultural experts, labour experts and the rest, but there were no political scientists; and that the big problem at the moment, of course, was the question of public administration and organizational structure. It is something we will be thinking of here in the next couple of months.

THE CHAIRMAN: Was it suggested that political scientists were too poor to attend?

MR. STEVENSON: I do not know. I do not know of any group where there are more political scientists.

PROF. MEISEL: Perhaps too rich.

THE CHAIRMAN: You would know better than I about that.

PROF. MEISEL: Unfortunately.

THE CHAIRMAN: Harvey, I think you were about

to speak.

MR. PERRY: I had a very minor comment on the suggestions of speaking to Royal Commissioners about their experience on contracting-out.

The Royal Commission that outdid all others in this respect was the Glassco Commission. They did all their work by contracting-out. I would think that if anyone would have learned about it, they would. The only thing we have learned is that good men are hard to find.

THE CHAIRMAN: The Glassco Commission presumably would have done this as efficiently as possible.

PROF. MEISEL: I would question that.

THE CHAIRMAN: So it might be a very good method.

MR. PERRY: Ron Ritchie of Imperial Oil will be able to give you some ideas.

THE CHAIRMAN: Are there any other matters on the procedure?

PROF. BRADY: I would like to raise a question, although I do not know whether this is the appropriate place to do it. It perhaps should be in the policy sub-committee. This is as to the scope of the paper that I was to prepare.

THE CHAIRMAN: Oh, yes.

PROF. BRADY: The shape of the federation. I have got to think on that and probe into it, its implications, and needless to say it is very

far-reaching, and I am not quite sure just what the limitations are and what I should cover. I think I would like to have discussion with somebody about that, whether this is the place to get suggestions.

PROF. FOX: We felt it should be a work of genius, Dr. Brady.

THE CHAIRMAN: We have no doubt it would be.

PROF. BRADY: It cannot be that.

THE CHAIRMAN: I think perhaps now you are back in this brisk climate, you will find it easier.

PROF. BRADY: I think there may be something in that.

THE CHAIRMAN: But I do think we have got to be a little more explicit about that, and I think we must have an early meeting of our sub-committee.

PROF. FOX: I wonder, Mr. Chairman, in view of the comments that were raised in Professor Brady's absence last time, which were questions of this sort ---

PROF. BRADY: I really do not know what was discussed.

PROF. FOX: I wonder if members of the full Committee here might not be invited now to make any suggestions they care to make.

THE CHAIRMAN: By all means.

PROF. FOX: It seems an appropriate point.

THE CHAIRMAN: As I recall, the objective was to have a description of the present status of federalism in Canada in terms of institutions and

machinery and problems. Am I right about that?

PROF. FOX: Yes, and reflexions of the shape, the direction that federalism was moving in and so on.

PROF. McWHINNEY: Yes, I think that is right. It is in a way related to what Donald is doing -- a paper studying the historical intention of the Founding Fathers, and it was agreed he was really going to draw from his early works a statement of what was intended, what was planned in 1867.

I think, Alec, the suggestion was that you should sort of hit the problem as at present, and examine the trends manifested up to date in federalism, which may or may not differ from the Founding Fathers' conception, and presumably establish some sort of projection of those trends, assuming the factual conditions upon which they were based continue. I think it was that sort of thing, don't you, Paul?

PROF. FOX: Yes, that was my interpretation of it.

MR. GATHERCOLE: Mr. Chairman, I thought Premier Duff Roblin was maybe a professor too, but at the time Premier Duff Roblin was down here speaking to the Canadian Club a few weeks ago, he mentioned to me that in his opinion the Premier of Ontario was the one person who had to be relied upon to give some definite leadership on the type of federation or constitution that we should have, or, in his view,

we should have for Canada. He says, "when I, at the Federal-Provincial Conferences, rise to speak, well, there are not too many people pay too much attention to me". This is a very modest statement on his part, but nevertheless probably was to a degree at least a realistic one. He says: "When Premier Lesage speaks, the Prime Minister of Canada pays attention". He says: "The only other one at the Federal-Provincial Conference who carries real weight and can do much to shape the future of Canadian confederation, is the Premier of Ontario". I feel that this is true.

Lubor Zink had an article in the paper the other day which had the very provocative caption: "Robarts, Put up or Shut up", I think was the title, but on the other hand the content of his remarks was not unflattering at all to Mr. Robarts.

I do feel that if this Committee is going to play the role which I would hope it would have, then it would rapidly come to some conclusions as to the type of constitution, the type of constitutional framework which is going to be in the best interests of Canada.

For that reason I think the work that Professor Brady has been on and some of the discussions that we have had should move forward as rapidly as possible, with a view to seeing, even if the conclusions are at this stage somewhat tentative,

that they would begin to give something of a shape which is more definite than that which exists at the present time.

THE CHAIRMAN: I think you have certainly described my own hopes very well, George.

Two matters I would like to say in reply to that. First of all, in a non-serious vein, you refer to "Probessor Roblin" and this reminded me of the opening of the conference at the Seigniory Club which I spoke of, where there had been a bit of good-natured banter between Dean Cohen, who was head of the conference from McGill, and Dr. Correy, who was chairing the opening session; there was a good deal of banter about the relative merits of Queen's and McGill. Then Mr. Roblin gave the opening paper and began by saying that he, as a non-university person, was able to stand in the position of some objectivity in this matter, and then proceeded to give one of the most extraordinary mornings of intellectual content I have ever participated in. It was a tour de force.

PROF. FOX: On what subject?

THE CHAIRMAN: On the very thing George was describing, that the future lies in the shape of federalism and it was hard, tough, explicit, realistic and emphatic. This group was a very top audience and a very discerning and very knowing audience, and I think he made a profound impression

on them.

DR. FORSEY: Is there any chance of our getting a copy of that thing?

THE CHAIRMAN: I have already enquired about this, and I hope we will, but it was not a thing which was put together as a full paper; and of course much the best part of the discussion was in the questioning afterwards and the discussion afterwards. I think he covered a lot of the same ground as you mentioned at the Canadian Club.

MR. GATHERCOLE: It may be possible to get a copy of that. I know he has the tape and his office is going to prepare copies, and they had a good many requests for copies of that address.

THE CHAIRMAN: There is a tape of the Seignior Club discussion, Don. We had better make a note of this as a reminder that I want to get after that, because I must say I wish all of you could have been there that morning. It was an extremely rich discussion and an important discussion.

The other thing I was reminded of when you spoke about meetings last week in Ottawa. I mentioned that Ontario put a paper forward at the meeting of Treasurers, which was fairly tough and, I think, one of the more consistent and lucid expositions of our position at the moment. It clearly caught the representatives from Quebec a little off balance, because I later on that evening had discussions with

their senior advisers and officials, who had sat up and taken notice of this paper and were probing and questioning and wanting to know exactly what it meant, exactly what was said. This is the first time in my brief experience that I have seen them caught off balance quite to that degree.

In the course of the discussion, one of these senior advisers said: "You know, the man who really holds the future of federalism in the palm of his hand today is the Prime Minister of Ontario" -- this same point you have made, and this came from Quebec.

DEAN LEDERMAN: We might add to that, Mr. Chairman, the proposition that I think of all the provinces of Canada, Ontario has the greatest stake in the viable federalism in maintaining a strong federal state, so perhaps this just reinforces the point. It means there is not too much conflict of interest between Mr. Robarts trying to take the national point of view and yet take proper account of the needs of Ontario as well. I have been a little worried about this conflict of interest there might be for him in this situation, as to just how much he was of a provincial premier and just how much he was of a national statesman, and definitely I do not think there is too much conflict of interest. He can serve both ends by the same support of the viable national federalism.

THE CHAIRMAN: In that connection, you were

telling me last night about these recent statements of Lesage which were rather interesting. Would you mind elaborating on them?

MR. STEVENSON: I have not seen the statements, but I was going from press reports. He has made two or three speeches in the last week or two, in which he has been quoted as saying to Quebec audiences that they should not be particularly worried about what might seem to be very strong pro central government statements by some of the Premiers of the English-speaking provinces. He was quoted as saying that Mr. Robarts and others have now come to a recognition that Quebec does have some kind of special status, which has also come out in fact through the opting-out formula and several other similar administrative changes over the last year or two; and that because Mr. Robarts or Mr. Roblin or one of the other Premiers may seem to be making what seemed to be anti-Quebec statements, that they could fit very well with the present Quebec position.

I think one statement also states that Quebec realizes that the interests and feelings of English Canadians do not coincide with those of French Canadians in Quebec as to the relative powers of provincial and federal governments.

DR. FORSEY: What a novel idea, what a great discovery.

PROF. McWHINNEY: Mr. Lesage's concrete

position on concrete problems like treaty-making though is much more modest than earlier statements.

I was reading his statement on the "umbrella" agreement with Ottawa. I had to make an addendum to an article I had done earlier on this, and it is really a position that is, I think, more modest than he need to have taken on the legal issues, and I do not think it is very much different from that of any other provincial Premier in the country would take. It is quite surprising that he is quoted in detail on this "umbrella" agreement and the entente complex which has become a term of art now.

"Entente" is a sort of provincial treaty and it represents, I think, a very significant, not withdrawal, but modification of the more inflammatory public statements of some of his academic, what would you call them, self-appointed spokesmen.

DR. FORSEY: There was an article in Le Devoir the other morning (I am sorry I have not it with me) of a certain speech of Mr. Lesage's on the special status of Quebec, which had some things in it which made me a little bit uneasy, and more specific things which made me a little bit uneasy, and some of those distressingly vague proposals which can mean anything or nothing and could mean something revolutionary. I will send it up to you in case you want to reproduce it for the use of the Committee.

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THE CHAIRMAN: Thank you.

6 DR. FORSEY: I have some exclamation marks in the margin and a few other marks that this seems to me to be of importance. Some of the things I thought were good and some of them were rather dubious, to say the least, but I think to some extent it represents one of his balancing acts which he has to perform between some of the wilder nuts in his Cabinet and the promptings of his own good sense.

I had some conversation with a former Quebec official the other day, who knew something about some of these things, and one gathers that Mr. LaPorte, for example, sees himself as something of a world figure, which must be a bit trying for the Premier of the province, I think.

THE CHAIRMAN: He was a bit trying for the members of this Committee a while ago.

DR. FORSEY: Washing hands semi-publicly of Mr. LaPorte's eccentricities.

MR. GATHERCOLE: I wonder, Mr. Chairman, how members of the Committee reconcile some of these more reassuring statements that are made from time to time by spokesmen for the province of Quebec, with the appointment as Minister of Welfare of Mr. Rene Levesque; and also the insistence which seems to be taking very clear form, that Quebec should operate its own Family Allowances.

DR. FORSEY: And Unemployment Insurance.

MR. GATHERCOLE: Yes, and may have moved into the field where it will be completely detached and separated and would give up even some services, but if you go down all the services one after another, then I am puzzled as to whether you are part of Canada in effect even though you may be in name.

This is one concern that I have. You can go so far and you can take some of these services over, because Canada has a constitution flexible in the political and administrative framework which allowed for diversities, and quite properly so. On the other hand, if you go down the whole list and you opt-out of these and say: "We run our show in all these areas" it does strike me that you have not anything other than a very illusory facade of a nation, rather than having something which is closely knit together.

DR. FORSEY: Yes, I could not agree more strongly, and I notice that Mr. Levesque says he gives himself one year to "repatriate" (in the new speech that these gentry employ) the Family Allowances.

PROF. McWHINNEY: That was the term we were using, of course, in council of the English-Speaking professors.

DR. FORSEY: A misuse of the English language. It is preposterous to talk about "repatriation" of Quebec or recovering for Quebec

something it never had.

PROF. McWHINNEY: English-speaking professors are equally preposterous in some respects too, as you would agree.

DR. FORSEY: Entirely. Like Mr. Roblin, I can say so.

PROF. MEISEL: Mr. Chairman, the point made by Mr. Gathercole, I really think approaches the very centre of the problem that the Premier drew to our attention.

It seems to me that at the core of this drift towards associate status is an assumption that the nature of Canada is really different from what I think has been assumed to be the case in the past.

My impression is that even the official spokesmen in Quebec such as Mr. Lesage, who has to perform a bit of a tight rope act, are imperceptibly adopting a different definition of the country, and that Mr. Robarts and the Province of Ontario eventually will have to respond to proposals which are really based on a different assumption about the nature of the country.

For instance, Mr. Gathercole used the words "the Canadian nation". I think this is something, as Professor Creighton will tell us when he does his paper, that had an entirely different meaning to us from that which is current now among the articulate leaders of French Canadian opinion.

I think when we come to deal with this question of associate status, we must recognize the two groups -- Quebec on the one hand and really the rest of the country on the other -- each thinking about Canada now in not entirely different terms but terms which are substantially different; I think if we are going to reconcile these two differences, we have to do some very serious thinking about what the implications of these two definitions are, and what can be done to provide all kinds of mechanisms that will permit us to redefine really the nature of the country in such a way that both definitions can survive.

DR. FORSEY: Mr. Chairman, I noticed the other day over somebody's shoulder a headnote in the Montreal Gazette that Mr. Pierre Trudeau had just made a speech in which he strongly objected to opting-out. I did not see any account of this in the Toronto papers and I wonder if we could take steps to get hold of what he said.

THE CHAIRMAN: We will certainly try to get it.

DR. FORSEY: That would be interesting to us. It is just possible we may be witnessing a come-back now from certain quarters in Quebec of a different concept from that as prevailed in high quarters there in recent years.

THE CHAIRMAN: I certainly did not get that impression of his position at the meeting at the

Seignior Club. On the other hand what he may have been saying was that there should be no contracting-out, possibly in the sense that we should have no more shared-cost programmes and that this situation should not be allowed to arise.

DR. FORSEY: I saw merely the headnote, and I hunted for it afterwards. It would be about a week ago.

MR. STEVENSON: Just one little comment on that. Last year when Professor Breton did a paper on contracting-out of shared-cost programmes for the Political Science Association, he had done this directly in collaboration with Mr. Trudeau and the social research group in Montreal, which I think had perhaps pretty well a group position that the maintenance of cost-sharing programmes was essential in a federation, or perhaps the optimum way of dealing with problems that improved both levels of government.

PROF. CONWAY: That speech of Mr. Trudeau's was carried somewhere in Ontario.

PROF. BRADY: Where was the speech made?

DR. FORSEY: I do not know. I just saw the headnote.

FR. MATTE: It was made at Loyola College, I know that.

DEAN LEDERMAN: I do not know to what extent Mr. Trudeau is considered to be out of step in

Quebec, but certainly what I know of his past led me to believe he is very sound. For instance, two or three years ago anyway his position was he had a lot of illusions about what could be accomplished by monkeying with the British North America Act, and that if people were allowed to do that they would be disappointed with the results, and it is best to leave it alone; that the centre of gravity of our problems lies elsewhere than in the major re-writing of the constitution.

PROF. McWHINNEY: What Eugene says is really quite consistent with what Trudeau has discussed with us, . . . views . . . of his, privately. I am sure what you believe you saw is pretty close to his private opinions.

I assume this change of position on the treaty-making power represented really a compromise between conflicting positions, and that Premier Lesage, I assume, had simply negotiated a middle road. It seemed to me, though, some retreat or withdrawal from more irreconcilable positions, if you wish, that have been ventilated in the past. Indeed, in June in the Vancouver meetings, Bill, you will remember Morand, this young man who came along and took a very irreconcilable position.

PROF. CREIGHTON: Mr. Chairman, we had recently a copy of a review by J.D. Saywell of the cultural-bilingual report which appeared in the

Canadian Journal of Economics and Political Science.

I understand that a review of the original report recently appeared also in Cite Libre. It runs in my mind that Trudeau is the author of this.

PROF. McWHINNEY: Of the review?

PROF. CREIGHTON: Of the review. It is very critical.

THE CHAIRMAN: We will try and trace it.

PROF. MEISEL: It is joint authorship, and a group approved this review by Cite Libre. It is the same group who wrote the manifesto that appeared in Cite Libre.

PROF. McWHINNEY: What issue is that?

PROF. MEISEL: It is the current issue.

Mr. Chairman, I think we certainly should pay attention to the views of Mr. Trudeau, but I agree with Dean Lederman that there is some question as to how many people follow this position of his; and I think that while we should certainly keep our eyes on all strands of Quebec opinion, I would like us to receive consistently some of the accounts of Mr. Lesage's speeches which seem to me in one way much more important. Recently in Le Devoir almost every three days you get long reports of statements of his. He has gone on record, for example, about the so-called "repatriation" of the Family Allowances, and I think we should perhaps receive this.

There was also an excellent editorial by Claude Ryan about ten days ago on this which I was going to draw to your attention and lost the chit on which I had marked the date.

THE CHAIRMAN: I saw that reproduced in one of the Ottawa papers last week.

DR. FORSEY: The reason I raised this business about the Trudeau statement is I think that although he has been considered rather passe by the young, I suppose, who preach the dogma of the infallibility of youth, now that he has been re-elected to Parliament along with Marchand and Pelletier, the views of those three -- which I think are not very dissimilar -- may count for rather more. All three of them are very articulate; all three of them to some extent out of step with the Laportes and Levesques; all three of them are people of some character. Marchand is an extremely tough personage intellectually and morally in the good sense -- morally tough-fibred.

I think we may find that a different aspect of French Canadian opinion is being presented rather authoritatively and rather forcefully from now on. Hitherto it has been off in the background and "poor old Pierre, there he is in his ancient ivory leaning tower which is in danger of falling at any moment. He doesn't count for anything much"; but it is a very different matter to have three people of

this calibre suddenly pitchforked into the centre of politics at Ottawa. You can no longer dismiss them as merely out there on the fringes chasing butterflies.

PROF. MEISEL: I agree with this, but on the other hand the position of a provincial government is likely to be less influenced by them than by the Levesques and Laportes.

DR. FORSEY: Oh, yes.

THE CHAIRMAN: John, returning to your earlier comments about the associate state and the effect on Ontario and so on, I take it you are saying that very quickly Ontario has got to either oppose or acquiesce or modify, in any event at least take some position with respect to this sentiment.

PROF. MEISEL: Yes, my guess is that there is very rapidly now developing the view in the Quebec Cabinet that Canada really is a partnership of two cultures or, as they would put it, two nations in the sense that it has a French Canadian nation and another nation. I do not want to defend this particular definition and I think it is indefensible, but this is the view that there is a partnership of two groups, one of which is represented by the Government of Quebec, and that in, for instance, social policy arrangements will have to be made in such a way that Quebec does what it thinks is necessary and desirable by negotiating with the

rest of the country; and that "associate status" is really coming to mean that in the minds of the Government of Quebec.

This means that the trend towards opting-out is going to grow, and that the Government of Ontario will have to be prepared to either accept this or make modifications in this, or simply become a leading member of the rest of the country which may say: "We do not accept this".

DR. FORSEY: I suspect also that part of the growth of this feeling in Quebec and in the Quebec Cabinet is the result of growing conviction that the rest of Canada can be pushed to practically any conceivable limit and that it will put up with anything. This is, I think, partly the result of the efforts of what I call the Mr. Milquetoast boys, especially among the English-speaking intellectuals, who in the earnest desire to be amiable at all costs, have, I think, failed both English Canadians and French Canadians very badly.

I think there is quite a tendency now in Quebec to believe that English Canadians will swallow things that in my judgment the great bulk of them will never swallow. I think it would be very much better to say plainly: "Look, there are certain things that can be done, and there are certain other things that cannot be done, to preserve any conceivable Canadian entity".

When you get to opting-out, it is one thing to opt-out of shared-cost programmes where the jurisdiction belongs to the province, and where they are asking to take over the management of their own constitutional problems. To this you can make no adequate reply, it seems to me, except: "Yes, all right, if you want. It may be foolish but if you want it, you can have it. It is your own property and you can do what you like with it. If you do not want to entrust us with the management of it, all right". It is quite another thing to demand rights to opt-out of things where the constitutional jurisdiction rests with the Dominion. If this be done, it involves a more or less complete reconstruction of the Federal constitutional fabric of this country; it involves a series of drastic amendments to the Canadian constitution.

There are two very different problems there. In the first case I would simply say: "All right, that is it, if you want them"; but on the other hand when it comes to certain other things, the extreme being monetary policy and fiscal policy, I suppose, on this point I would go the stake every day of the week.

PROF. CREIGHTON: You can only go once, Eugene.

DR. FORSEY: Arise from the ashes and go again. You would only need to go once; you are

through, you have had it.

PROF. MEISEL: What was in my mind, I think, was that the consequences of the views that I think are now held by the Government of Quebec will require this kind of drastic re-definition of which Dr. Forsey has spoken.

PROF. BRADY: You have a confrontation as it were.

PROF. MEISEL: I think perhaps in a sense, yes, although I think much would depend -- I think if the Government of Ontario is prepared to make some fairly practical counter-proposals, I think it can to some extent blunt some of the more extreme thrusts of the kind of thing that may come out of Quebec.

DEAN LEDERMAN: Mr. Chairman, we are up against something that I would want to qualify a bit what Dr. Forsey has said.

PROF. CREIGHTON: I too.

DEAN LEDERMAN: In this sense, that there is a lot of leeway in the constitution as it is, and there always will be in any federal constitution with lists of powers on both sides and general terms about just where particular programmes fall constitutionally.

One of the most serious things we have to contend with in the Quebec problem is that they are going to insist on the most extreme provincial

interpretation of the scope of their powers. In other words, given the ambiguities, given the leeway in the constitutional definition of powers, they are going to go as far as they can in terms of interpreting those powers as conferring upon them the widest possible scope.

For instance, the question that Dr. Creighton has raised in his Trent University paper, the conception that the Fathers of Confederation had of the general power, residuary power of the Dominion Government, . on matters of national scope and importance by their inherent nature; and every one of these shared-cost -- not every one because some are capital programmes -- but the continuing shared-cost programmes, welfare services and so on, involve standards.

PROF. CREIGHTON: Indeed, national standards.

DEAN LEDERMAN: And if those standards are not national, you are in effect going to get into provincial tariffs on the mobility of population and so on; Quebec people will say "Unemployment Insurance, Family Allowances, these are all provincial". I would argue about that under the present state of the constitution.

THE CHAIRMAN: You reassure me then on one point that came out in the Ontario statement to the Federal-Provincial Conference last July, where the Prime Minister said:

"Therefore we urge that this Conference
 "should devote a large part of its
 "discussion to clarification of some
 "of the muddy areas of jurisdictional
 "concern. Before any arguments are
 "launched, it is essential to devise
 "clear lines of authority and responsibility."

That is what we are saying there. There are those
 which are clear and explicit, and there are those
 in the social and economic policy which are not
 explicit and, as you say, depending on your interest,
 you are going to push those as you care to.

DEAN LEDERMAN: Mr. Chairman, I was going to
 say Quebec people will naturally, in their present
 mood, everywhere there is doubt they will say:
 "We get the benefit of the doubt" and this leads
 on to load the Senate or Supreme Court of Canada
 to make it up to ---"

DR. FORSEY: Unemployment Insurance, even
 Lord Haldane could not have said was a doubtful
 area. There are those two plain words in
 Section 91. On this kind of thing there is going
 to be a moment when the rest of Canada will have to
 say to Quebec: "If you want that, that involves
 an amendment of the Constitution. Now then, let
 us get down and talk about amendment to the
 Constitution". You do not rule that out, no,
 but it is a quite different matter from saying:

"Here is a shared-cost programme where in fact you have allowed us to set standards and to administer your constitutional property. Now you want it back. All right, of course, you can have it back if you want". That is a different thing. You opt-out of something like unemployment assistance or disability or health insurance or what-not, and you are opting-out of something which involves no amendment to the constitution whatsoever. If you try to opt-out of Unemployment Insurance, you make a straight, flat, outright amendment to the constitution and one that is, I think, of some considerable importance, certainly from the point of view of the people with whom I am usually associated.

MR. PERRY: Mr. Chairman, in the fiscal and economic field, I think it would be unfortunate if the situation hinged only on the constitutional position.

PROF. CREIGHTON: Hear! hear!

MR. PERRY: In fact it does not. The mere concentration of money in these programmes in Ottawa has given a mass of fiscal power to the Federal government, and this can be very seriously reduced in its effectiveness simply by re-transferring to the provinces those areas of expenditure which are within their constitutional jurisdiction.. So that indirectly one could seriously hamper the fiscal and economic activities of the Federal government

by simply re-transferring the constitutional functions to the provincial governments; so that there is a very subtle area in between here in which the constitutional position may be quite clear but in which you could very easily be undermining the real fiscal powers of the Federal government.

PROF. CREIGHTON: Not merely fiscal, but the national interests as well.

MR. PERRY: Yes, the national interests as well.

DEAN LEDERMAN: I quite agree with all that.

DR. FORSEY: I quite agree with that.

I think there is a distinction between these two things I have been trying to summarize and simplify, and it is just possible that when we are faced with these what are demands in fact for drastic amendment to the constitution in one direction, there might be some drastic proposals for amendment in another direction on certain things.

I think there has been far too much tendency in English Canada to say "No" to things coming from Quebec -- and some of them in my judgment needed to have "No" said to them resoundingly -- but there has not been enough tendency to put forward positive proposals, and that is why I think it is very important that this Committee and its sub-committees should help to provide the Prime Minister not only with reasons for saying "No" where "No" needs to be

said, but with reasons for saying "Yes" where "Yes" can and should be said, and reasons for saying:

"Well, that does not seem to us to be sensible. What about this?" in other cases.

PROF. FOX: Mr. Chairman, I was going to make the point that Dr. Forsey is making. I do not want to suggest we curtail this discussion, but it seems we can do three things. The first thing, in view especially of what Mr. Robarts is going to raise with us on the 21st, we should try to get through Don and our sources as much information as we can about what the actual proposals are coming from Quebec. It is very vague.

I have, for instance, and could make available to Don and perhaps he might make some copies of it, the proposal which came out of the St. Jean Baptiste Society in the brief to the Quebec Legislative Committee. That is the first point.

Secondly, I think we should prepare ourselves for sensible criticisms of what we do not like in it by reviewing, for example, comparable situations, such as the Articles of Confederation that the Americans adopted in 1876 and what went wrong there. In other words, let us inform ourselves about what the dangers of these proposals are and by comparative material.

Thirdly, let us try to think before January 21st of what Dr. Forsey was suggesting, which are

reasonable alternatives that can be offered to the Prime Minister.

It seems to me that with these three approaches we may get further ahead.

THE CHAIRMAN: I agree, and if we could have this discussion, we have got on with this content in his absence, I think he would be well served.

MR. GATHERCOLE: May I make one observation which occurred to me when the discussion was going on related to the legal and constitutional aspects and the influences through these means that could be brought to bear on maintaining the Canadian nation.

Harvey Perry mentioned the fiscal side of it, and what I am about to say relates to the fiscal side. When a province opted-out over the past years, that is, some time back perhaps before the last decade, the province often did so with considerable sacrifice to itself.

For instance, the Province of Quebec for years stood outside the tax suspension agreement, at a cost to the province and to the people of about \$40 million. However, about 1954, it is my recollection, the Government of Quebec imposed a personal income tax and blamed the Government of Canada and its high income tax rates for the fact that there was double taxation on the people of Quebec. There were considerable discussions with the Prime Minister of Canada (Mr. St. Laurent in those days) and ultimately

Mr. St. Laurent agreed to abate Canada Income Tax in the Province of Quebec or any other province which elected to impose its own personal income tax up to an amount which I believe was, as I recollect, approximately 10 per cent. So that Quebec thereby was enabled to collect its own income tax, to opt-out for its own income tax in this case, and to receive the money from it.

Now, in the subsequent discussions, it was concluded by the Federal government that a province that wished to opt-out of a service should not only have the liberty to exercise its own right to opt-out of it and run its own affairs, but it should also carry with it the revenue which it had obtained not only from the imposition of a tax on its own people but the amount of revenue which would come about if it were participating in the programme. In this way the Federal Government disarmed itself: it lost the very important control that it could have exercised over any province in saying: "If you opt-out or contract-out of this service you can still have not only the money you collect from the taxes which would go for this particular service, but also anything above that which would be equal to that you could obtain if you were within the national framework".

Now in this way it does seem to me some thought might be given to whether the fiscal

measures -- and it would be extremely difficult to alter them now since this principle has become embedded into it -- but whether any revision could be made or should be made; but in any event there is this fact that in the Federal Government adopting this principle in practice it has disarmed itself from one of the most important measures of keeping services national.

DR. FORSEY: I had just one other comment. I think it is interesting also in that article of Mr. Trudeau's he makes a point which I have often made less well, that if we can give French Canadians more of a feeling that the whole is theirs, not just Quebec, then it seems to be quite possible that in a relatively short period they may be willing to sit down and look at this nation in functional terms and say: "What is the sensible way out of these things?".

As long as they feel that the central part is English, that it is off there, it is other people, it is "them, not us", that is one thing; but if they can get the feeling -- and they can get it only if we will do something about it -- if they can get the feeling that the central power is all of us, theirs as well as ours, then they may be willing to look at things in a very different way.

I am rather hopeful that the efforts of the "three wise men" from French Canada may have some effect in this direction.

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--- Short recess

THE CHAIRMAN: Gentlemen, I think we should proceed. I am not sure whether we have answered Professor Brady's original request, but I think what we should do, when Professor Brady comes forward to the research policy sub-committee with his interpretation of what we want, we will do likewise and we will try and establish some clarity in this position.

Having reassured ourselves of the fundamental importance of what we are doing, I think we ought to get on to the doing now, and turn back to item 2 which was the resolution on the Supreme Court which we have to resolve at this meeting.

I might ask you, Bill, if you would initiate the discussion on this point and speak to it.

DEAN LEDERMAN: Very well, Mr. Chairman, I will just read the two propositions here first that we have before you. First:

That the Supreme Court of Canada as at present constituted should be continued as the final tribunal for all constitutional decisions. The Supreme Court itself must have the last word on what is a constitutional issue for the purposes of this final jurisdiction.

Secondly, subject to this, there would be no objection to final determination

by the provincial courts of Quebec of private law matters under the Civil Code of Lower Canada arising in Quebec.

Just to speak of the wording of these propositions in the first place, the words "Civil Code of Lower Canada" may be archaic. We might be all right with the wording "private law matters arising in Quebec"(I am not sure) but that is not central to what is being proposed here.

The basic reason, I think, for submitting this proposition is that we feel that proper judicial review is at the very heart of working federalism, and our whole tradition in this country and in the United States for that matter, because of their English inheritance, has been to rely on the typical constitutional superior court as the tribunal for interpretation of constitutional powers. In other words, the Supreme Court of Canada is the typical superior court in the English tradition, as established by the Act of Settlement.

As far as my own views are concerned, I made the case for this type of review tribunal in the paper that was circulated on the interpretation of the constitution, which was an attempt to develop the logic and philosophy of reasoning for the determination of the distribution of powers, and trying to develop the logical and philosophical proposition that you had to have an impartial

tribunal of interpretation with the last word on what the constitution means. This is not amendment; this is what the constitution means in its present terms. I think it calls necessarily for an institution, as I say, like the superior court, which is certainly one of the outstanding features of our inheritance of English constitutional institutions and English constitutional law.

I am just afraid that any movement towards associate statehood for Quebec, of course, is going to focus, as one of the foremost things it does, on the Supreme Court of Canada and will call for reforms and changes in that institution which might be unacceptable, which I suspect would be unacceptable to me anyway.

I think it is essential to a final tribunal that it must itself have the last word on what is a constitutional issue. If someone else, if one of the interested parties can say: "This is not a constitutional issue. It does not go to the Supreme Court at all" and place their own interpretation on their own powers and go ahead, then the balance and the order is gone from the Federal constitution.

I think this is a point of the greatest importance, because even if we can agree to an amending process, major amendments are going to be very few and far between and will be extraordinary rather than usual. The adjustment of the

constitution every day, every month, every year, to change, has to take place in changes in governmental practices, it has to take place through administrative agreements, but it also has to take place in the interpretive activity of the final tribunal of interpretation which will lay down the main guide lines.

So to maintain the essential character of the Supreme Court of Canada as it is now, I think is most important. That really is the main point that is being made in the first proposition there.

Of course, this is a complex issue and we cannot claim to have captured all the features of it in three sentences here and two propositions.

One thing that has occurred to me that perhaps we have not covered is: what about constitutional issues which take the form of issues about human rights and fundamental freedoms? Perhaps in proposition 1 we should add that "constitutional issue includes any issue concerning fundamental rights and human freedoms".

You will notice in proposition 2 I have said: "Private law matters under the Civil Law Code of Lower Canada". This would leave criminal appeals to go to the Supreme Court of Canada, and I think the present wording allows that, but it does not deal explicitly with this matter of the tribunal which is to have the last word on what comes under

the heading of human rights and fundamental freedoms.

PROF. BRADY: "Private law matters", you couldn't interpret as covering civil liberties?

DEAN LEDERMAN: The trouble is, Dr. Brady, that they can come up in connection with private law matters. The padlock law was struck down in connection with an action over rent.

PROF. McWHINNEY: They can come up procedurally in terms of private law. There is the further problem, of course, that the categorization of what is public law and what is private law is essentially embedded in ethnic cultural attitudes, and certainly one notices even on continental Europe that sometimes what is private law would be public law there and vice versa, so that any formula you are working is going to be in difficulties.

10 DEAN LEDERMAN: In the Sutzman case the landlord said: "I can break this lease because you are in breach of the Propaganda Act of the Province of Quebec" to the tenant; "You are disseminating propaganda from this apartment and this permits me to break the lease".

PROF. McWHINNEY: The Ron Carelli case arose as an action in tort, private law, but the basis for finding that a tort had been committed involved accepted constitutional law notions, so it becomes public law according to the court majority.

DR. FORSEY: It seems both points are covered in the resolution as it stands: one, that the Supreme Court of Canada itself would have the decision on what was a constitutional matter; secondly, that the criminal law questions are covered by the fact that they refer to "private law matters under the Civil Code".

DEAN LEDERMAN: Yes, under the Civil Code. I think perhaps it is all right as it stands. In any event, this is an internal resolution at the moment; it is an internal document in this Committee.

MR. MAGONE: You are not drafting a statute.

DEAN LEDERMAN: We are not drafting a statute and we are trying to indicate an attitude mainly as a matter of advice to the Prime Minister, so I think perhaps it is all right.

THE CHAIRMAN: Gentlemen, we have the resolutions in the spirit in which they are put forward, and they come as no surprise to us. What is your wish?

PROF. CREIGHTON: I really can add nothing but to suggest an amendment that civil liberties and human rights be included after (I have no exact phraseology on this point) or a separate sentence should be added to clause 1 simply saying that civil liberties and human rights are included in the definition of constitutional things.

DEAN LEDERMAN: One could say:

"The Supreme Court itself must have the
"last word on what is a constitutional issue
"for the purpose of this final jurisdiction.
"The phrase 'constitutional issue' includes
"issues concerning human rights and
"fundamental freedoms."

PROF. McWHINNEY: No, if this were ever to
be released publicly, I would caution against a
statement of that sort, but for our own interpretation

PROF. CREIGHTON: Why?

PROF. McWHINNEY: Because it seems to me that
a small statement such as this could not probably
get by expressed as it stands. Pandora's box
is opened up. This is what the fight went on about
with Ron Carelli; the common law say it is and
the civil say it is not.

PROF. CREIGHTON: We ought to say what
definition we want to make.

PROF. McWHINNEY: Fine, but I make a
distinction between a recommendation to the Premier
for his private consumption and, say, a public
release of the thing.

PROF. CREIGHTON: I think we are not releasing
anything publicly at all here.

THE CHAIRMAN: On the other hand we are
trying to convey the sense of this meeting to the
Prime Minister, and I dare say if he were going to

make any public announcements on the subject, he will probably then send this point for ample constitutional interpretation, further interpretation.

PROF. CREIGHTON: Another suggestion -- and I speak in deference to the wisdom of our legal experts here -- it seems to me that it is conceivable perhaps that the Supreme Court might not have the opportunity of deciding what was or was not a constitutional case unless the said case happened to be appealed.

PROF. McWHINNEY: Why do you say that? I am sorry, would not one of the litigants ---

PROF. CREIGHTON: I say, unless it had been appealed.

PROF. McWHINNEY: Are you suggesting procedurally there should be a sort of common law certiori?

PROF. CREIGHTON: I am not suggesting, no. I am suggesting it ought to be modified in such a way that the Supreme Court would be able to bring the case up, if it thought it was a constitutional case, despite the fact that nobody had appealed the decision in the lower court.

PROF. McWHINNEY: In effect you are making a very sophisticated, technical legal proposal.

PROF. CREIGHTON: I did not know it was as sophisticated as all that, but it is what I propose.

PROF. McWHINNEY: Accept a compliment when

it comes.

MR. MAGONE: That, you know, happens in any case; it can happen now.

PROF. McWHINNEY: I think it is an inherent power.

MR. MAGONE: Yes, it is inherent. If it is not appealed, all right, that is that. Nevertheless, until a case involving that particular point gets to the Supreme Court, then in the province in which the decision is made -- Quebec, we will say -- that is the law there; but the Supreme Court of Canada in dealing with that issue in some other case, will over-rule it and say: "This is the Law" and this happens all the time.

DEAN LEDERMAN: I think I can see what Dr. Creighton's fear is, that there is some way in which provincial officials in Quebec or any other province could stop a matter going to the Supreme Court of Canada.

PROF. McWHINNEY: Simple poverty of the litigants.

MR. MAGONE: There is a way of doing it, and it has been used. There is a case arose in Saskatchewan in connection with the hired employee in Maple Creek Post Office, in which the question was the minimum wage of Saskatchewan and its applying to employees in a post office. The Court of Appeal of Saskatchewan said that the minimum wage

law of Saskatchewan applied in this particular case; and the federal people, because it was not a company, the federal people referred the whole question to the Supreme Court of Canada and had it determined and determined the other way. It can be done.

DEAN LEDERMAN: There is a power of reference, but I think there is a point that Dr. Creighton must know about, and it is this. First, the Supreme Court of Canada is an appeal court, so that a person starting out to defend his civil liberty has to start in the lower provincial courts. The point is that when you say the Supreme Court itself must have the last word on what is a constitutional issue and issues concerning human rights and constitutional issues, if you say those two things, that means that if the Quebec citizen defending his civil rights before Quebec courts reaches the highest Quebec court and they find against him and they refuse him leave to appeal, nevertheless he can apply to the Supreme Court in Ottawa in chambers, and they can give him over-riding permission to make his appeal anyway.

PROF. MEISEL: Even if he has asked.

DEAN LEDERMAN: That is correct now.

PROF. CREIGHTON: Suppose there are other actions. I have a suspicious mind. Suppose people say to him: "You had better not appeal this case for a variety of reasons".

PROF. McWHINNEY: Why not go beyond and say the court should, if this system, division in fact of such private law system is adopted, the procedural basis of the court should be adjusted to ensure that the court, on its own motion, can bring up a constitutional issue or can bring up private law cases involving constitutional issues. I think this is essential.

PROF. CREIGHTON: I think that is the literal sense, to say that the court on its own motion.

PROF. McWHINNEY: Something analogous to the certiori proceedings, for the purpose of comparative federalism. This is quite common.

DEAN LEDERMAN: For the court on its own initiative?

PROF. McWHINNEY: Of course.

DEAN LEDERMAN: To requisition a case?

PROF. McWHINNEY: To requisition part of a case, if it wishes.

MR. MAGONE: I cannot see them doing it.

DEAN LEDERMAN: It would be novel.

MR. PERRY: Who pays the cost in a situation like that?

PROF. McWHINNEY: In a situation like that, it depends on the system, but it is quite normal to provide in this situation that the state bear the cost.

MR. PERRY: This would appear to be

eminently reasonable.

THE CHAIRMAN: Can I ask the lawyers, is there any precedent for this?

PROF. McWHINNEY: The most flexible example of this is the United States Supreme Court certiori jurisdiction. You get something analogous to it in the West German system.

DEAN LEDERMAN: But the litigant has to move.

11 DR. FORSEY: When the Padlock Law was passed, I was living in Quebec and I was one of those who took strong measures, as you know, first of all to get it disallowed; secondly, to get it referred to the Supreme Court of Canada. We failed on both counts. We did bring the case to the Quebec courts, a group of us. None of us had much money.

PROF. McWHINNEY: You financed it in effect.

DR. FORSEY: That was just it. We could not finance it. I suppose I had about as much money as anybody, and I had a salary of \$2,600. There may have been a few people in the group who had a little more. We got as far as the Superior Court in Quebec, and we got an extremely bad, bombastic, rhetorical judgment from Chief Justice Greenshields, and we could not afford to carry on any further. Even though our lawyer was prepared to do it for nothing, the costs of getting any further were completely prohibitive to us, and we could not get the Dominion Government to refer it. So there it

rested from 1938 until -- when was the Sutzman case?

PROF. McWHINNEY: 1954-1955.

DR. FORSEY: Part of the trouble here was the spinelessness of the Dominion Government, which was not prepared to refer the thing. There was a means of getting at this and a means of getting to the Supreme Court of Canada, but the Dominion Government lacked political courage to do so.

If you are going to propose this certiori kind of thing that Professor Creighton's proposal involves, I think, then of course you are proposing an innovation as far as Canada is concerned. I do not know that that would be a bad thing.

PROF. CREIGHTON: It would be a good thing.

DR. FORSEY: To propose an innovation of this kind. Then you are not simply in the position of standing with your back to the wall saying -- assuming you say you can and get your back to the wall -- and you say: "No" something or "Yes" something. I think there is probably something to be said for this.

PROF. McWHINNEY: It does not need to be concretized yet in terms of the special procedural device like certiori, but I think it is a good system to have more flexible, if you wish, procedural tools available to the Supreme Court, and the Supreme Court of Canada happens in comparative terms to be one of the least rigid of

all the federal courts.

I like the idea myself of our bringing in the third paragraph of Donald's motion -- or Donald's suggestion would be better -- framed in more general terms to state that the court should have inherent power, if you wish, to review all private law cases involving interstitial constitutional issues.

DEAN LEDERMAN: I am certainly in favour of the idea.

PROF. FOX: How are you going to get the court to move if the court is as reluctant as the Federal Government was in Professor Forsey's case?

PROF. McWHINNEY: A lot of issues and proceedings they will attack with cudgels and hands if it is timorous, I think.

DEAN LEDERMAN: The Minister of Justice and the Cabinet are the people who would have to move to make the reference, and they are timid because of political implications, thinking of the next election; but if the judges have the power in their hands to call the case up ---

PROF. FOX: You think they would be likely to?

PROF. McWHINNEY: You have your private law pressure groups beginning to -- I do not mean in partisan hands, but the new young Canadian legal history bodies, like the Canadian Civil Liberties

Association. It has only got about \$50,000 capital now, unlike the American body, but interested groups like this, when a power exists and it is not exercised, will fulfill the most useful function of saying: "There is a power. Why don't you do something?". This happens a good deal in the United States.

So I think the political timorousness, if you wish, on the part of civil servants, which is very understandable if they have a discretion to exercise, could be overcome by bodies such as this.

PROF. CREIGHTON: Mr. Chairman, could I ask the help of Dean Lederman in transferring my second amendment into terms which he considers appropriate? "The Supreme Court can, of its own motion --" what is a good phrase to say? -- "transfer any of these cases to its own jurisdiction"?

PROF. McWHINNEY: Shall have inherent powers.

PROF. CREIGHTON: Either one, but certainly involving that idea.

MR. MAGONE: It would be enough, Professor Creighton, to give the Supreme Court the power of its own motion to grant leave to appeal in the case and then toss it back. I can see a lot of practical difficulties about it.

PROF. McWHINNEY: Yours is about a third of the way along.

MR. MAGONE: With printing, this kind of

thing.

PROF. McWHINNEY: His goes two-thirds of the way around it. It would be acceptable.

PROF. CREIGHTON: Anything should be done to get civil liberties cases before the Supreme Court.

PROF. McWHINNEY: I would stick to your more general principles and perhaps cite Mr. Magone's suggestion as one method of doing it.

THE CHAIRMAN: I hesitate to suggest this, but I have the uncomfortable feeling, from the fact that a number of us are sitting quietly, that the constitutional sub-committee is still debating the contents of this motion.

PROF. CREIGHTON: No, it is not.

DR. FORSEY: I am alarmed by the implications of what Professor Fox said a moment ago about timorousness of the judges. Judges, of course, are human beings and they take the usual major compromises of which Laskin so often spoke; but at the same time the suggestion seems to emerge from what Professor Fox said that judges are primarily political animals. This makes me uneasy because this is exactly the kind of thing I found from some of my Quebec friends that they think, for example, that you cannot get a judge who is appointed by the central government to give an impartial verdict in a case involving the central

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government and a provincial government; that he is there in effect as a delegate of the central government who appointed him and that he will vote on a case on the basis of the authority that appointed him, from gratitude, loyalty or what you will.

This is the kind of thing Mr. Pelletier put in exactly these terms almost to Mr. Davie Fulton at Couchiching. He said: "You can't tell me that you believe that a judge appointed by the Federal government in a case involving the Federal government and the province, will give an impartial decision". Davie Fulton said: "I certainly can".

This is, I think, one of the central points we are going to come to in our arguments on this, that some of the people from Quebec will say it is all very well to talk in Professor Creighton's terms of an impartial court, but this is not impartial and they will say it is not impartial because judges are political animals and they will vote according to the authority that appointed them.

Now, to any mind trained in common law problems -- and I do not mean just lawyers but the rest of us who have soaked up a certain amount of this otherwise, simply from the intellectual world in which we have lived -- this is a perfectly monstrous suggestion. It is almost inconceivable and unbelievable that anybody should think that

judges behave in this way, but we are going to run into the difference between the two mentalities, as it were, very often on this point. It is a rather serious point and I think Professor Fox's suggestion that the judges will behave like politicians, will behave more like civil servants, then I have to say let us be very careful before we start admitting this kind of thing, which I think is totally false.

PROF. McWHINNEY: You said they were
timorous.

THE CHAIRMAN: Professor Fox should speak in his own defense.

PROF. FOX: I did not mean to imply anything such as Dr. Forsey suggested though, driven to it, I might; but the point I want to make is that the judges' interference may be essential but judges are by nature conservative (with a small "c") and they, along with the rest of us, do not go looking for work, and I would be interested in what Edward and Bill would say on this. It seems to me unlikely that the judges are going to call up a case before them, unless they are pressured such as you suggest, and this introduces a new dimension.

Perhaps we should provide for the view that this is a likely possibility, but I do not think it is worth providing for if we think the judges

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are going to summon cases before the court and make work for themselves. In other words, I think they have to be pushed a little bit perhaps.

PROF. McWHINNEY: I do not think this need be so. You might have reservations, but certainly this is a far weaker Supreme Court intellectually in the 1960's than we had in the 1950's; it is intellectually weaker and far less courageous. I mean, these things go in cycles, and I think the Supreme Court of Canada is perhaps the most timorous of the six or seven federal courts in the main federal countries, but it need not be so, and I would be very sorry if we tempered what Donald suggested as a much needed procedural remedy upon the present fact, which may simply be very temporary after all -- that the court may not use it.

You can train people, you know. One of the reasons the court is weak is some of the requirements, the age retirement 75 rule which is silly in the Supreme Court of Canada although eminently sensible in Ontario courts. It took Rand away and Kellock who went at the same time saying: "Why stay? It is not a very interesting court without Rand". You have got a few crucial people disappearing and it need not be so.

PROF. BRADY: If the court is weak today, it may not be weak tomorrow.

PROF. McWHINNEY: Or it may be very

strong.

THE CHAIRMAN: That covers it pretty well.

DR. FORSEY: You would not get a foolproof, knave-proof, or coward-proof arrangement, but the question is that what Professor Creighton proposes gives an extra possibility of defending civil liberties, human rights and fundamental freedoms against the slings and arrows of outrageous provincial courts.

DEAN LEDERMAN: I think, Mr. Chairman, I would suggest that we are agreed in principle, that is, the members of the constitutional sub-committee are agreed in principle on these propositions and, I think, probably agreed also on taking account of the point that Dr. Creighton has raised and getting it into the wording. We cannot do it on the spur of the moment here.

THE CHAIRMAN: No.

DEAN LEDERMAN: Can we register this agreement in principle, and we will bring back on their wording next month.

THE CHAIRMAN: Fine. I am a little uncomfortable about the capacity to resolve this here.

PROF. McWHINNEY: What is that, consensus with the motion, Bill, as presented, as acceptable subject to adoption of a satisfactory formula at a later stage which may incorporate

ATTORNEY

THE COURT: Now, I am going to ask you a question.

Q. Yes, your Honor.

A. Yes, your Honor.

Q. Now, I am going to ask you a question.

A. Yes, your Honor.

Q. Now, I am going to ask you a question.

A. Yes, your Honor.

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A. Yes, your Honor.

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A. Yes, your Honor.

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A. Yes, your Honor.

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A. Yes, your Honor.

Q. Now, I am going to ask you a question.

A. Yes, your Honor.

Q. Now, I am going to ask you a question.

A. Yes, your Honor.

Q. Now, I am going to ask you a question.

A. Yes, your Honor.

Q. Now, I am going to ask you a question.

A. Yes, your Honor.

Professor Creighton's suggestion?

DEAN LEDERMAN: With the human rights and fundamental freedoms included, including Dr. Creighton's suggestion.

PROF. McWHINNEY: And the possibility of introducing greater procedural flexibility as to the court's review of constitutional issues.

DEAN LEDERMAN: We are all agreed on wanting to do this, but it will take a little working out.

THE CHAIRMAN: Can you instruct me then, are there two separate points? We originally talked about adding a section on civil rights. Then there is the point about the Supreme Court exercising initiative. Are there two points?

PROF. McWHINNEY: Two that Professor Creighton raised.

DR. FORSEY: Don't say "civil rights" or you will get into heading 13 of Section 92. "Human and fundamental rights" would be much safer.

DEAN LEDERMAN: "Civil rights" in this sense means rights of the citizens; it is civil in that sense, not civil in the sense of being private law.

PROF. McWHINNEY: So the consensus is on the motion you have presented, subject to the subsequent examination by the Committee and working out of a satisfactory formula encompassing Professor Creighton's two points.

DEAN LEDERMAN: We can register approval of

the person who is the subject of the investigation.

It is the duty of the investigator to determine the facts of the case.

and to report the results of his investigation to the proper authorities.

It is the duty of the investigator to maintain the confidentiality of the information obtained.

and to use the information only for the purposes for which it was obtained.

It is the duty of the investigator to cooperate with the proper authorities in the investigation.

and to provide the information requested by them.

It is the duty of the investigator to be honest and impartial in his investigation.

and to avoid any bias or prejudice in his investigation.

It is the duty of the investigator to be thorough and complete in his investigation.

and to leave no stone unturned in his investigation.

It is the duty of the investigator to be prompt and efficient in his investigation.

and to complete his investigation as soon as possible.

It is the duty of the investigator to be accurate and reliable in his investigation.

and to provide accurate and reliable information to the proper authorities.

It is the duty of the investigator to be courteous and polite in his investigation.

and to treat all persons with respect and dignity.

It is the duty of the investigator to be loyal and faithful to the proper authorities.

and to maintain the integrity of the investigation.

It is the duty of the investigator to be brave and courageous in his investigation.

and to stand up for the truth and justice.

It is the duty of the investigator to be honest and truthful in his investigation.

and to provide honest and truthful information to the proper authorities.

It is the duty of the investigator to be diligent and hardworking in his investigation.

and to put in the necessary time and effort to complete his investigation.

It is the duty of the investigator to be flexible and adaptable in his investigation.

and to be able to handle any situation that may arise.

It is the duty of the investigator to be a team player and to work well with others.

this idea, but ask for re-wording of the provisions to be looked at.

THE CHAIRMAN: Then we have an agreement in principle and appropriate form on some heads.

PROF. MEISEL: This is agreement on the part of the members of the constitutional sub-committee, it seems to me, not of the whole Committee. We have not discussed this. For example, I have some grave reservations about this.

PROF. McWHINNEY: About Professor Creighton's two?

PROF. MEISEL: Yes.

PROF. McWHINNEY: We separated the first point on the general motion.

PROF. MEISEL: Yes, that is something else.

PROF. McWHINNEY: I thought there was consensus.

PROF. MEISEL: I think there was.

THE CHAIRMAN: There is consensus on the general. Now you have reservations on the particular points.

DEAN LEDERMAN: We had better leave the whole thing over.

PROF. McWHINNEY: I think the Chairman's suggestion has worded this very felicitously.

THE CHAIRMAN: You are very complimentary.

PROF. McWHINNEY: You did use a term of art, that we noted consensus, which is different

from adopt. It simply means, to people going over past notes that we pick up next week, that we had agreed on the thing pure and simple, but we also agreed to look at Professor Creighton's two suggestions, and hope that we can get a satisfactory draft discussed. Am I not correct?

THE CHAIRMAN: That was my hope.

PROF. SYMONS: If there is some concern to get something agreed upon and forwarded, I think we have had an opportunity to look at it and consider and live with the main recommendations from the constitutional sub-committee for some months now. The Committee of the whole surely must be ready, if it is ever going to be, for a final decision on a recommendation in regard to them.

The two suggestions that Professor Creighton has made, and in particular the second one, seem to raise somewhat new material as far as I can assess it as a layman. I think I am enormously in sympathy with the intent of both of them, but if you want from a layman like myself any attempt to offer a thoughtful or useful opinion on it, really I would want to go away and look at them for a month and after Dean Lederman has a chance to propound them and to actually put them into writing. I can sense there must be considerable administrative and procedural considerations which Mr. Magone has suggested which just cannot be brushed aside.

I wonder if we might reach some decision on the main body of the re commendations today? It looks as though we are in due course going to reach consensus on the two new matters that Professor Creighton has raised, and perhaps on the first one we can agree on that today, but I would be a little hesitant personally, without understanding a little better the implications, to rush into an agreement upon the second of Professor Creighton's, although I am completely in accord with the spirit of it.

PROF. CREIGHTON: Perhaps we could hear the objections Professor Meisel has.

PROF. MEISEL: Mr. Chairman, I would like to preface this by admitting that I am not anything like an expert in this, and if ever there was a layman you have one before you now; but the thing that worries me a bit is that the purpose, I think, of Professor Creighton's suggestions is to really strengthen the defense of human rights in Canada -- a purpose, obviously, with which I am in enormous agreement. However, the terms of reference of this Committee are not really to concern itself with human rights, but to consider problems touching on Confederation. While I do not think that this is entirely unrelated, I think our major focus ought to be on relations between the provinces and the position of Ontario in Confederation, and I think that an action which is likely to expand the

powers of the Federal court and make its interference, if you will, in the affairs of a province or affairs which take place within the province, more direct: this expansion, I think, will meet with considerable antagonism and antipathy on the part, I think, of the government at Quebec. Therefore, I wonder whether, in terms of our general broad terms of reference, this is an area which we should push very strongly at this point.

If we decide to push it I would very strongly urge the Premier of Ontario to have private talks with the Premier of Quebec, before he does anything in public on this, because I think there might be a possibility of reconciling some of these differences.

While I agree with Dr. Forsey's earlier point that we should take the initiative in some of these things, this is not an area where I think, in the nature of political terms, I would now recommend initiative being taken.

I do not argue at all with the sort of general purpose of this move, and I think anything that can be done to strengthen human rights, of course, is desirable; but the consequences on Confederation may be very unfortunate.

So, looking at this proposal from that point of view, I certainly want more time to think about it, and to see what the implications really are.

PROF. CREIGHTON: How could you argue that the Supreme Court of Canada is not a central institution in Confederation and infinitely related to it? This seems to me to be incomprehensible.

PROF. MEISEL: I accept this, of course.

PROF. CREIGHTON: And its functions and its position are central.

PROF. MEISEL: I agree.

PROF. CREIGHTON: Therefore it is within our terms of reference, I should think lodged firmly in the very middle of it, and therefore not to come to some conclusion about this is simply an abdication of our functions.

PROF. McWHINNEY: We can take one aspect out of this. I think perhaps it would be helpful if I indicated more fully. This issue of civil liberties, in a way, is really a very basic federal constitutional issue. It is the consequence of the presence of the two legal systems. You get a system of double characterization. What is private law in one system may be public law in the other. One system says it is purely a tort action and another system says, no, it is a basic constitutional issue that happens procedurally to arise in a tort action, and so it really is a federal choice of law problem.

So I think it is proper to say this is a legal issue. It may be on balance the Committee

feels for political reasons it is a legal issue they do not wish to press, but I think is a legal issue, and as it stands now it seems to me the formula the Chairman suggested probably reconciles the points you and Tom made with the constitutional committee's work. That is to say, for recording our agreement on the original recommendation by Bill, we do not need this as a motion, but we note it as a consensus, if you wish, and that we ask the Committee to report back next month, say, on these two further matters, and presumably then they will bring forward a substantive motion for the Committee to adopt. That would give a month to consider these important policy issues, but at the same time if the Premier asks the Chairman what we think of the Supreme Court, we can at least say that on the main thing there should be one central Supreme Court; (2) however, that we think as far as civil law can be isolated this may rest with Quebec Superior Courts, at least you have something to report in the meantime.

PROF. CREIGHTON: Mr. Chairman, I will be glad to sit amongst the lay and vote upon these propositions, but it seems to me very unfortunate that we should assume that whereas other people are perfectly entitled to propose the most fundamental changes in the constitution and are doing it constantly, that we should hold back our opinions

as an advisory body on those same fundamental questions for political reasons. It is not our business in the first place, it seems to me.

PROF. MEISEL: Mr. Chairman, perhaps there is not too much point in arguing this now, but I would like to make one more point that it seems to me we have to look at our work as a total package. Although we give a whole range of recommendations from time to time to the Government of Ontario, to my mind the issues arising in connection with economic matters, particularly the fiscal arrangements between the Federal government and the provinces, these are areas in which the biggest crisis and the most pressing crisis lies.

I fear that recommendations in this area we are dealing with now, the expansion of the powers of the Supreme Court in relation to human rights, may make it more difficult in reaching certain kinds of agreements on the economic side.

Therefore I would like to weigh, in a sense, the priority that we attach to this whole problem in relation to the priorities we attach to other problems.

If we advise the Premier of Ontario to go forth now and make this kind of demand, what is this going to show to him as a negotiator in other areas? We may conclude this is an excellent agreement which may strengthen his hand, which

will give him initiative and what-have-you; but I would like to look at our problem not only in the context of its constitutional implications but in the context of the whole political climate in which the negotiations are taking place between the Federal government and the provinces and among the provinces.

DR. FORSEY: There is certainly point in that, but at the same time, speaking as one who lived for some number of years in the Province of Quebec under the rule of Mr. Duplessis, I must say that it seems to me one of the fundamental reasons for having a national government is that certain rights of Canadian citizens should be secure in any part of this country. If it had not been for the existence of Dominion criminal law courts, with Dominion judges and a Supreme Court of Canada, I suspect that the fate of dissidents in the Province of Quebec in the days of Mr. Duplessis would have been very much harder than it was.

I suspect also, and I know from the experience I have described, that the powers to protect us were not thoroughly adequate. They were vastly better than nothing, but were not thoroughly adequate.

I am not at all sure that if some of the young "turkeys" in Quebec succeed in getting power, that you can rule out as a possibility that we may

not find that Mr. Duplessis chastized the dissidents with, what is it, whips and scorpions, that it might be a case of scorpions.

I think the economic questions and so forth are enormously important, but I am not by any means sure that one of the basic reasons for the existence of a really viable Canadian Federation may not be the protection of the human rights and fundamental freedoms of Canadian citizens, wherever they are, whether they are under the rule of Mr. Duplessis, Mr. Lesage, the Devil Incarnate in Newfoundland, or maybe the lunatic in British Columbia.

MR. MAGONE: What Dr. Forsey is saying, I think, and I agree with him, is that human rights and fundamental freedoms are constitutional matters. I do not think there is any doubt about that.

DR. FORSEY: Pretty basic.

PROF. McWHINNEY: This is the present position of the Supreme Court of Canada.

MR. MAGONE: I do not think there is any doubt about that.

DEAN LEDERMAN: This resolution says the Supreme Court says what is a constitutional issue and settles the categories problem.

MR. MAGONE: And I think they have interpreted it pretty literally. Secondly, I do not think the second suggestion about giving the Supreme

Court of Canada power of its own motion to raise these points is practical at all. For this reason I am against it.

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MR. PERRY: Mr. Chairman, I would just like to raise the more fundamental point, not in terms of its consequences for the nation, but probably for the proceedings of this Committee. Is it the intention that our position on any of these broad subjects be sort of set down like another Code of Hammurabi in these seven or eight lines? I think it is going to lead us to an impossible situation.

THE CHAIRMAN: This raises a point which was the reason I am very anxious to have our meeting with the Premier on the 21st, because I think I would like to come back to a discussion we had a month or two ago, when we said that clearly this Committee is not going to arrive at positions of consensus to advance to the Government; but we hope that this Committee might shed light on some of the decisions which the Premier has to make with regard to policy, and we would hope further that there were some super-basic minimum positions that we could adhere to as a body.

However, the point that Professor Meisel has brought out leads me to say this, that this is not a policy-making body here; what we recommend to the Premier is not necessarily going to be translated into policy. We are

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trying to offer opinions on questions which initially are legal or economic or cultural (and I hope that applying the normal philosophy of the civil service to this is not inappropriate); that we are trying to advance technical expert advice on these questions, and it then becomes a task of the government to translate them into the full political package of their behaviour, so to speak.

I do not mean to make this distinction absolute, John, in the sense that any Civil Service adviser obviously does not try to strip what he says completely of its political implications if it is going to be listened to at all, but that if we are trying to go too far into second-guessing how this may come out from the Premier in policy terms, we may never really get anywhere, and what we are trying to do here is establish in certain areas our opinions which we consider to be acceptable to us generally or positions which are alternative, about some of which some may have felt that way and some this way.

PROF. BRADY: In other words, differences of view may need to be expressed, to be at all accurate.

MR. PERRY: I think in fairness to the Premier they should be expressed.

DEAN LEDERMAN: In fairness to ourselves.

THE CHAIRMAN: I think we will be here a year from now if we hope to have total agreement.

MR. PERRY: In other words, should not this really prove a memorandum of hypothesis files setting out some of the considerations we have been discussing?

DEAN LEDERMAN: Mr. Chairman, I have been uncertain as to the procedure in this Committee and we have been feeling our way, of course, and I think we have been accepting procedure as we go along. We are up against fundamental points here. Unless the Premier is going to attend all our meetings and listen to the discussion, then holding discussion among ourselves is not going to do him any good unless something did come out of it.

THE CHAIRMAN: Right.

DEAN LEDERMAN: That he can read and from which he will get help.

My feeling is this, that this is one of the fundamental institutional questions on which he might expect us to take a position and take it in fairly brief compass as far as expression is concerned. There will be other situations in which one simply reports that there were three points of view in the Committee -- A, B and C -- and they are not entirely reconcilable, but on a few very fundamental things, which I think you did mention just a minute ago, that there are a few really fundamental things, there is nothing wrong with making an attempt to reach consensus. Now, if we

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result prove a contradiction to the previous theory?

Second. It is not clear how the result can

be explained.

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Fourteenth. It is not clear how the result can

be explained.

do not, all right: we report that to him.

THE CHAIRMAN: Trying to draw this to a conclusion, I think that we should try to perhaps follow the suggestions we have had that we read this as a position with these limited terms of reference, that at the next meeting we bring in recommendations on the two points that have been raised, and that at that time I attempt to set this out for the Premier in the text of all the qualifications that have been raised about it, or at least the principal qualifications. "Here is a position on that in the normal sense. There are these implications", and so on. It is for him to decide the exact line of the legal entity in writing.

DR. FORSEY: You may wind up with a couple of formulations by the legal experts -- Dean Lederman, Professor McWhinney for example -- and the Committee may then, it seems to me, decide that perhaps the bulk of us will agree with it, perhaps not; but on the other hand we might have to send forward to the Premier, it seems to me, a statement that while many members thought this, some members -- and then we may have perhaps Mr. Magone's query and other members, and then we might have some query of the views from Professor Meisel and other people who felt as he did on the matter. We might just have to say to the Premier: "Here are the various

points. On this particular thing we are substantially agreed; on these other things there was a difference of opinion".

THE CHAIRMAN: Surely.

DR. FORSEY: "And the bulk of us felt one way and some others felt the other way".

DEAN LEDERMAN: May I say, Mr. Chairman, I do not think anybody could feel diffident about lawyers and legal issues. We are all pilgrims in the same valley, and I am sure that people with other qualifications than legal are just as competent to pronounce on these issues as the lawyers, because, as one of the Chief Justices said, the constitution belongs to the people; it has to be something that everybody can deal with.

THE CHAIRMAN: I am sorry we have had so much difficulty defining ourselves. I certainly accept a large part of the responsibility for that. On the other hand, this is an unusual exercise we are engaging upon, and I think I see some of the procedural matters more clearly now, and I really think we have got to confront the Prime Minister on this matter and see where he wants us to go and how he wants us to proceed.

DEAN LEDERMAN: I think this makes your **version** why the Premier wants to meet us in January, very sensible.

THE CHAIRMAN: This is my feeling. We have

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quickly to come to this point indeed, or we may be losing ourselves.

PROF. McWHINNEY: This formula, Bill, as you know, was not in any sense -- it is a unanimous formula now, but there were wide differences of opinion within our Committee and the formula represents what seems to be a rational compromise of positions and is sufficiently general, in the parts where compromise was necessary, to encompass this, so that I do not think there is any risk of burdening the Premier with the arbitrary views of a couple of people.

THE CHAIRMAN: May we leave this in this manner? I think I understand what we do now. In the time that remains before lunch I think we should go to our sub-committees. We are to go down to lunch between 12.45 and 1.00 in the usual place. There is not much time remaining, and I presume therefore that the sub-committees will want to take up the balance of the day with their deliberations.

The cultural committee will be meeting in your office, Don.

MR. STEVENSON: Right.

THE CHAIRMAN: After you depart ---

MR. STEVENSON: Peter Venton will be there to take notes if the sub-committee wishes.

THE CHAIRMAN: He is a member of our staff. The constitutional committee will be here and then

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at quarter to two will leave for an hour or so with Mr. Dick, and may return here. Ray, you will be with them.

The economic and fiscal committee will meet in my office. Mr. William Cameron of my staff will be there and will remain with you throughout the afternoon or as long as they wish to carry on.

I think you all know what work you have on your agenda, but I would suggest to the constitutional sub-committee some discussion by way of preparation for your meeting with Mr. Dick should be in order and treaty-making.

PROF. FOX: Do you have any feeling as to what time we should rise this afternoon, or is that up to each sub-committee?

THE CHAIRMAN: I think that should be your own matter.

--- The meeting concluded at 12.15 p.m.

at that time the bill had been passed by the
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